

## EXHIBIT 3

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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

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## Whole Language vs. PHONICS

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### The Dyslexia Debate

In response to the wholesale denegation wrought by whole language reading programs that exist to provide, educators around the world are increasingly calling for a "phonics-first" approach to reading instruction. This means helping reading materials away from a child until he has mastered his ABC's. The average age for learning the alphabet (including the sounds made by each letter) is three to four.

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However, for parents who want to stimulate the reading pathways of their child's brain in infancy, there is no need to risk the child reading words in the wrong direction, or read backwards. While teaching whole words, it is still possible to teach babies to look at the text they're reading from left to right — hence the arrow pointing to the word in YBCR (as Titzer explains):

Find out the last letter of the word  
or letter, and then the first letter, and look  
at the word from left to right. (The YBCR  
DVD can help you over this problem.  
It shows the first letter of the word, and  
then the last letter, and then the word from left to right.)

Another way to teach reading directionality from babyhood is to point to the text in books as you read to your child. This is a technique recommended by Kaiting, who theorizes that some cases of dyslexia could be prevented by fostering "native reading" — that is, enabling children to absorb the written form of language at the same time as they are naturally absorbing the spoken form:

Many dyslexics can do very well as a type of native reader. They are able to absorb the meaning of the words and the structure of the sentences, but they are unable to read the words. The problem is that they are already masters of spoken language by the time they encounter writing. Their brains do not expect to have low-level novelties of language introduced at this point in their development.

A research study published five years prior to Kaiting's book lends support to his theory. In 2003 scientists from Yale University reported the findings of a longitudinal study into the causes of dyslexia. The researchers had detected two types of the reading disability, with the more serious type (which did not resolve itself by adulthood) attributable to the reading pathways of the brain having improperly connected neural circuitry. The reason for this was believed to be an absence of proper stimulation at an early enough age. In other words, early exposure to written language could help prevent the more serious type of dyslexia.

The voice in the head...



TEACHING YOUR  
BABY TO READ

YOUR BABY'S  
PHYSICAL  
DEVELOPMENT

## EXHIBIT 4

Experts: 'Your Baby Can Read' claims overblown - Money - TODAYshow.com

Page 1 of 2

## 'Your Baby Can Read' claims overblown, experts say

It's memorization, not real reading, child development specialists agree

By  
Jeff Reeson and Robert Powell

NBC News  
Updated 11/17/2010 3:12:53 PM ET

Ginger Torres was fascinated by the television commercials featuring babies, some as young as 3 months old, reading. Not just words but phrases, like "Touch your ears."

The ads boasted that the remarkable achievement was made possible by "Your Baby Can Read," a program which promised that with the use of flash cards, DVDs, pop-up books and some quality time between parent and child, almost any preschooler could learn to read before they even entered kindergarten.

Ginger Torres wanted that for her 3-year-old daughter, Chloe, so she bought the kit. It was a decision she would come to regret.

"The reason I wanted to buy it is to give her a head start before school," Torres said. "[But] what you're getting is not really what they say."

### Reading or memorization?

TODAY wanted to find out if the claims were true, so child development experts from the nation's most prestigious institutions of learning were contacted as part of an investigation of the "Your Baby Can Read" program.

Are those babies really reading?

"No," said Dr. Nonie Lesaux, a child development expert at the Harvard University Graduate School of Education. "They memorize what's on those cue cards ... It's not reading."

"It's an extraordinary manipulation of facts," said Dr. Maryanne Wolf, director of Cognitive Neuroscience at Tufts University.

From coast to coast, TODAY found 10 experts who were all of the same basic opinion: Young children can be made to recognize or memorize words, but the brains of infants and toddlers are just not developed enough to actually learn to read at the level the way the enticing television ads claim they can.

Related: Preschoolers watching WAY too much TV

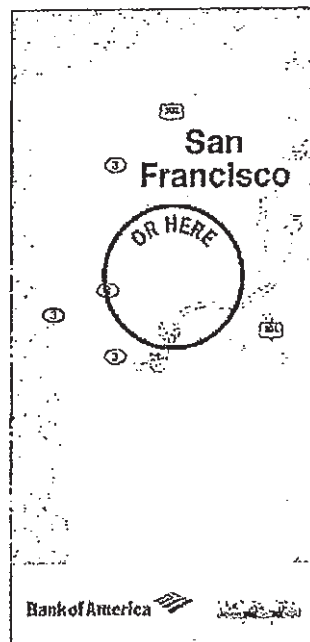
There are some remarkable exceptions, like the toddler who surprised Ann Curry on TODAY in 2008 when Curry pulled out a cue card with a word the child had never seen before. She successfully mouthed the word "kangaroo," but experts say the vast majority of children cannot be taught to read until their brains are developed enough.

Video: Watch this baby read

### Dashed hopes

The problem with programs like "Your Baby Can Read," the experts TODAY contacted say, is that they promise such results routinely, raising hopes that will only be dashed.

"I think it's misleading. I think it's false, and I think it raises false expectations," said Dr. Karen Hopkins, a developmental pediatrician at New York University's Langone Medical Center.



Experts: 'Your Baby Can Read' claims overblown - Money - TODAYshow.com

Page 2 of 2

Asked about the experts' collective opinion that children cannot really learn to read until they are 4 or 5 years old, the creator of "Your Baby Can Read" offered a simple explanation.

"They're all wrong," said Dr. Robert Titzer, who calls himself an infant learning expert but actually holds a graduate degree in "human performance" — the study of motor skills.

Titzer told TODAY his program is backed by scientific research. He acknowledged that it starts with memorization, but insisted it leads to reading.

Related: Fussy newborns may have more troubles later on

"We have a book full of studies that support the use of our program," Titzer said, agreeing to provide the research.

But instead of published research on "Your Baby Can Read," Titzer sent TODAY his own customer satisfaction surveys and general studies about child learning.

Video: 12-month-old who can read

Titzer stood by his company's claims.

"The baby does learn to read," he said. "My children could read better at age 4 than I could at age, you know, at my age."

Titzer would not disclose how much money he's made off his program, but the company says more than a million "Your Baby Can Read" kits have been sold — some for as much as \$200 in stores and online.

Ginger Torres got her money back after complaining to the company, but believes the program is still cashing in on false promises.

Video: Look who's reading ... a tot!

"I was very upset because I felt so misled," Torres said.

The experts say the best way to teach your children reading skills is the time-honored one that doesn't cost a dime.

Read to them. Talk to them. Play with them. If a child is having fun, he or she will learn.

More from TODAYshow.com



Is snooping in your spouse's e-mail a crime?

Leon Viniker, 33, whose wife was allegedly having an affair, faces felony charges for reading her e-mail's contents. But his lawyer said that if the prosecution succeeds, "they better be" in a "much more court house" to secure a flood of similar cases.

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110 people recommend this. Be the first of your friends.

## EXHIBIT 5

Los Angeles Times

ARTICLE COLLECTIONS

Local News

## Too Young to Read?

*Education: Robert Titzer says he can help parents teach their infants how with his videotapes and books. His critics say it's just a ruse to sell his wares.*

August 29, 1998 | ELAINE GALE | TIMES STAFF WRITER

Robert Titzer didn't come to Orange County to be invisible.

Before starting his new teaching job at Cal State Fullerton on Wednesday the Ph.D. in human performance was standing in front of a crowd of parents at an Irvine baby store, touting his video "Your Baby Can Read." Copies were available on site, at \$13.99 a shot. Unlike most academics, he comes equipped with his own public relations man.

According to Titzer's teachings, infants as young as 9 months can read, as long as parents don't wait too long to start. Say, by about 3 or 4 months of age.

Titzer concedes that his main study for this theory, and for the book and video he sells via his Web site, is based on his own daughters, now 4 and 7. He has published academic papers in the field of human learning, but not about infant reading. And when challenged by the criticisms of other child-development experts who say babies cannot truly read, Titzer acknowledges that what the infants are doing is memorizing the images of a few words, which despite the title of his video cannot be called reading.

"Initially it's simple word recognition," he said, adding that it takes several months for babies to respond to the word images. But he defends its worth. "There is this window of opportunity for learning language and earlier is better."

Titzer's critics abound, but he also has supporters, who say that in some areas of child development he has done solid and important work. A number of fans also showed up at his Irvine talk, parents who like what he has to say and several who snapped up copies of his video.

"He's like a god," said Corinda Vasquez about Titzer. She was one of the parents at Babies R Us who had been using the video with her child. "He can't do any wrong in our eyes."

Her 14-month-old son, Tanner, has been watching the video for almost a year. "I hate to brag, but Tanner is so smart due to Dr. Titzer's teachings," she said.

The 30-minute video flashes more than 50 words in a sequence followed by a pictorial representation of the word. For example, the word "bellybutton" lingers on the screen, with a slow pronunciation, followed by footage of a child pointing to her bellybutton.

Tanner, after a year of watching Titzer's video, responds to all 50 words. "He needs to see more words in order to learn to read new words," said Titzer. "Now he can only read the words in the video. But that's still quite impressive."

Titzer, 38, said that when his daughter was 9 months old, before she could talk, she would recognize words. If he held up a placard with the word "mouth" on it, she'd open her mouth. "Reading is the most important skill that parents can teach their children," he said.

Titzer's academic credibility isn't questioned by his colleagues at Cal State Fullerton, says Roberta Rikli, chair of the college's division of kinesiology and health promotion, who hired Titzer.

"People are mostly quizzical about his work rather than critical," said Rikli. "They are waiting to see if it's for real."

Cal State Fullerton hired Titzer as a part-time adjunct faculty member, where he will be paid \$11,000 to teach and conduct research about infant reading to further his theory—and, critics say, his company profits.

"The lack of rigorous scientific review combined with the commercialization of the product leaves me a bit suspect," said Matthew Melved, executive director of the Zero to Three Foundation in Washington D.C., an organization that conducts research on young childhood.

"Perhaps it impresses adults if a very young child can repeat words like an orangutan, but it doesn't promote their long term-brain power," he said.

Titzer rejects the notion that his work is any more commercial than what other academics do. Some professors write textbooks and require students to buy them, he said. "I'm not getting rich off this," he said, and parents can make their own videos or use flash cards.

Melved's concern with Titzer's work is that parents may wind up teaching rote memory-based learning rather than cultivating thinking, thereby undermining a child's long-term progress.

Defending his video, Titzer says Melved's claim that it won't lead to higher thinking skills is ridiculous.

"Babies gain by learning new words, and learning new words helps their thinking skills," he said.

Melved advises parents to resist the hype of rearing an uber-baby. "Being able to read at a young age does not guarantee that a child is going to be successful later," he said.

Another child development expert questioned the use of videotapes to teach very young children.

<http://articles.latimes.com/print/1998/aug/29/local/me-17569>

12/28/2010

Robert Titzer - Too Young to Read? - Los Angeles Times

Page 2 of 2

"In the first two to three years of life, the best learning occurs in terms of human interaction, not in the form of videotapes," said Dr. Stanley Greenspan, clinical professor of psychiatry and pediatrics at George Washington University Medical School in Washington, D.C.

Titzer said he never meant for his video to replace human interaction. "Most parents don't have 24 hours a day to spend with their babies, unfortunately," he said. "This video can be valuable to stimulate brain development while the parents are busy doing other activities."

Concerns about his methodology and scope haven't kept Titzer's business, Infant Learning Company, from selling 9,000 copies of the tape via the Web site. He doesn't know how many have been sold via bookstores.

"I'm willing to do whatever it takes to help my child," said Carolyn Pinkney of Irvine, who attended Titzer's recent talk.

However, Pinkney is cautious about the benefits of Titzer's video, which she's been watching with her 11-month-old daughter, London.

"Some people say that you shouldn't push a child at this age," she said. "But I'm not going to lock her up, tie her to a chair and make her watch the video."

Titzer moved to California this month after working for two years in a tenure-track job at Southeastern Louisiana University. He has a PhD from Indiana University and a master's degree from Pennsylvania State University. Betty Baker, who hired Titzer at Southeastern Louisiana University, said that while it might be too early for him to draw conclusions in his work on infant reading, she believes he will "have a reputable amount of subjects and data" at some point.

His work on infant memory will be published this year by the Psychological Review in Los Angeles.

According to Robert Bjork, professor at UCLA and editor of Psychological Review, the paper is an "ambitious theory" designed to account for errors that infants make in search tasks. Bjork said he can't speak to Titzer's work on infant reading, which this paper does not address, but that the paper is "a major theoretical contribution."

But Bjork also expressed concerns about Titzer's claims of teaching infants to read, saying anxious and ambitious parents are easy prey for the latest educational fad. "Parents are very concerned, so they can be susceptible to these kind of claims," he said.

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## EXHIBIT 6



1 of 1 DOCUMENT

Copyright 2000 Plain Dealer Publishing Co.  
Plain Dealer (Cleveland, Ohio)

April 2, 2000 Sunday, FINAL / ALL

SECTION: LIVING; Pg. 4L

LENGTH: 868 words

HEADLINE: EXPERTS DOUBT BRAIN-BOOSTING CLAIMS FOR PRODUCTS, BUT SALES SOAR

BYLINE: By JACQUELINE L. SALMON and JAY MATHEWS; WASHINGTON POST

**BODY:**

The videotape shows 50 words one by one, while bouncy music plays in the background.

"This says crawling," the narrator intones as the word appears onscreen. "Can you say crawling?"

But crawling is an alien concept for many in the video's target audience. They're too young to even sit up.

The videotape, called "Your Baby Can Read!" is designed for children as young as 3 months. And it's just one in a wave of popular new products that claim they can stimulate brain development during the critical first three years of life.

There are also "Brainy Baby" and "Baby Shakespeare" videos. Flashcards and educational software programs for infants. Cassette tapes to teach Spanish, German or French. Classical music CDs to strengthen the neural pathways "linked to abstract and spatial reasoning."

Although most child development specialists say it's doubtful these products will make your child smarter, manufacturers and toy stores say they're selling briskly.

Robert Titzer, a San Diego public school teacher, said he has sold almost 60,000 of his \$15 "Your Baby Can Read!" videos since their 1997 debut.

The Baby Einstein Co., also launched in 1997 by a Colorado at-home mom, had sales of \$3.4 million last year and expects to sell \$20 million of its videos, CDs and flashcards for babies this year.

Sales of computer software for babies and toddlers have doubled since 1997, according to the market research company PC Data.

**Science vs. psychology**

The trend has drawn rebukes from many child-development researchers, who say the makers of such products are misinterpreting the findings of neuroscience and causing parents to worry needlessly about their baby's development. Infants and toddlers grow intellectually through everyday experiences rather than because of any particular toy or video, several experts said.

"We do know ... the types of experiences and relationships a baby has in the first few months and years of life are critically important," said Matthew Melmed, executive director of Zero to Three, a nonprofit group that studies young children's development. "But to translate that research into specific products to boost babies' brainpower is really an abomination - a commercial abomination."

EXPERTS DOUBT BRAIN-BOOSTING CLAIMS FOR PRODUCTS, BUT SALES SOAR Plain Dealer (Cleveland,  
Ohio) April 2, 2000 Sunday, FINAL / ALL

The makers defend their claims by citing research studies on brain growth, although the studies did not involve their products. In a few cases, the companies point to scientists they consulted and to awards the products have won from various organizations.

Debra Mills, a neuroscientist at the University of California at San Diego who consulted on the development of "Brilliant Beginnings," a \$40 book-and-CD kit for parents interested in "nurturing the genius in your child," acknowledged there are no studies linking brain growth to specific infant activities. Nevertheless, she said, the kit is a useful guide to the enriching experiences a baby needs.

"A lot of parents don't know what to do, even very well-educated people," Mills said. "This just gives a minicourse in human development."

Parents buying the items say they want to make sure their children don't fall behind at a crucial stage in their development.

But educators and researchers say there's no cause for such worrying. Parents who read and play with their babies, respond to their cues and show them affection are giving them all that's needed for optimum brain development, they say. What matters are "things that good parents have known how to do since the beginning of time," said Robert Slavin, an educational researcher at Johns Hopkins University.

Critics of the smart-baby products say those who market them are confusing neurology, the study of the brain as a spongy, grayish lump, and psychology, the study of human behavior.

There are many psychological studies, having nothing to do with brain cells, showing that very young children deprived of normal experiences develop emotional or intellectual disabilities. Meanwhile, neurologists have discovered that the number of synapses, or vital connection points, in the brain increases enormously from before birth to age 3 and begins to drop in early puberty.

But scientists say there's no evidence that this surge of synapses will get an extra boost from particular images, sounds or activities, although brain growth can decrease when children are severely abused or neglected.

"There are no data to show that with each new experience you're adding synaptic connections," said Harry Chugani, director of the PET center at Children's Hospital of Michigan, who has been at the forefront of research into children's brain development.

Although school officials have stressed reading aloud and giving books to children before they start kindergarten, several educators are skeptical about products designed to teach babies how to read. While it's possible for a child under age 2 to look at a printed word, say it aloud and point to an object to demonstrate the word's meaning, they question whether that will make the child a better reader in later years.

The best advice for raising a smart baby, said Robert Pianta, professor of clinical psychology at the University of Virginia, is "relax and enjoy playing with your children."

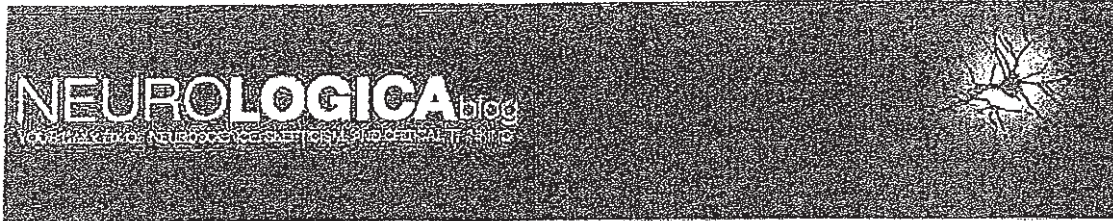
GRAPHIC: PHOTO BY: WASHINGTON POST; Will these products make baby smarter? It's doubtful, say most child development experts.

COLUMN: BABY SMARTS

LOAD-DATE: April 3, 2000

## EXHIBIT 7

- [Home](#)
- [About The Author – Steven Novella, MD](#)
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Jul 02 2009

## Your Baby Can Read – Not!

Published by Steven Novella under Uncategorized  
Comments: 17

I have received numerous questions recently regarding the latest infomercial craze called Your Baby Can Read. This is a program that promises to teach infants and toddlers how to read, giving them a jump start on their education. Their website claims:

A baby's brain thrives on stimulation and develops at a phenomenal pace...nearly 90% during the first five years of life! The best and easiest time to learn a language is during the infant and toddler years, when the brain is creating thousands of synapses every second – allowing a child to learn both the written word and spoken word simultaneously, and with much more ease.

This is mostly true – in fact the first four years of life is not only the best time to learn a language, it is the only time that language itself can be acquired. If a child is completely deprived of exposure to language during this time the neuro-developmental window will close. People can still, of course, learn second languages after the age of four, but it is more difficult and their brains will never be as hard-wired for those second languages as they are for a primary language learned before age four.

But the company goes off the rails of evidence when it conflates language with reading. There is no window of opportunity for reading like there is with language – adults who have never read can learn how to read. And while our brains are pre-programmed to absorb language, reading is more of a cultural adaptation.

The site also abuses evidence when it claims that:

Studies prove that the earlier a child learns to read, the better they perform in school and later in life.

Yes – but this might have something to do with smarter kids being able to learn to read earlier. Also, smarter parents, or just parents in a more stable and nurturing environment, may be more likely to read to their children early. What we have is correlational data with lots of variables. None of this necessarily means that forcing kids to learn to read early has any advantage.

In general studies of neurological development and education show that forcing kids to learn some task before their brains are naturally ready does not have any advantage. You cannot force the brain to develop quicker or better. In fact, it seems that children need only a minimally stimulating environment for their brain development program to unfold as it is destined to.

This further means that the whole “baby genius” industry for anxious parents is misguided. This is just the latest incarnation of this fiction.

There is another layer to this debate, however – that between phonics and whole word or whole language reading. One school of thought believes that children learn to read by first mastering the sounds that letters make then putting them together (aka hooked on phonics). The second school of thought believes the children read whole words, and therefore can be taught to memorize whole words and the phonemic understanding will come later in its own time.

In recent years the phonics side of this debate has been dominant in the education community. But the whole word group is a vocal minority.

However it also seems that there is an emerging third group who combine the two methods in a practical way. People read by both constructing words from their phonetic parts, and also by memorizing and reading whole words. Have you ever received this e-mail:

Aroodnig to rseearch at Cmabrigde Uinervtisy, it deosn't mtaer in waht oredr the ltters in a wrod are, the only iprmoantn thing is taht the frist and lsat lttter are in the rghit pcale. The rset can be a toatl mses and you can still raed it wouthit pobelm. Thihs is buseace the huamn mnid deos not raed ervey lttter by istlef, but the wrod as a wlohe.

This would seem to support the whole word school of thought. However, we also learn new words by sounding them out, and still have to do

<http://theness.com/neurologicablog/?p=569>

12/28/2010

this for uncommon words. So a blended approach seems practical and is gaining acceptance.

The Your Baby Can Read program is an extreme whole word approach. Infants and toddlers are taught to memorize words, which they can then recognize and name from memory, even before they can understand what they are reading. Critics of this approach claim that this is not really reading, just memorization and association. Some even caution that by taking an extreme whole word approach, phonic understanding can be delayed and the net result can be negative.

Others are critical of this entire approach of forced learning at a very young age. It is more productive, they argue, to give the child a loving supportive environment and let their brain develop as it will. You are far better off spending your time playing with and bonding with your child than engaged in drills or having them sit in front of a video.

There also does not appear to be any evidence that programs like Your Baby Can Read have any long term advantage. Their website does not provide links to any published studies to support their claims. Regarding the founder it declares:

Dr. Titzer's research has been published in scientific journals, including the prestigious Psychological Review.

True -- but misleading as a PubMed search on Titzer R came up with only two publications, neither of which have anything to do with learning to read. His Wikipedia page claims that he has published no scholarly work on infant reading.

#### Conclusion

While the background concepts are quite interesting, the bottom line is that we have another product being marketed to the public with amazing claims and no rigorous scientific evidence to back them up. This product also falls into the broader category of gimmicky products claiming to make children smarter or more successful academically.

Anxious parents wanting to give their kids every advantage is a great marketing demographic, in that they are easily exploited. But like all gimmicky schemes promising easy answers to complex or difficult problems (weight loss, relationships, or academic success) in the end it is likely to be nothing but a costly distraction from more common sense approaches -- like just spending quality time with your kids and giving them a rich and safe environment. What such products often really provide is a false sense of control.

17 responses so far

#### 17 Responses to "Your Baby Can Read – Not!"

1. # piotron 02 Jul 2009 at 2:38 pm

Don't you just love when you try to expose something, and Google displays their ads all over your site ☹  
Great article... as always!!!

I can't stand the competition between parents (not children) hooked on those "magical" learning programs. We don't let our kids play in the first place and we want them to know quantum physics.

2. # PhilBon 02 Jul 2009 at 5:09 pm

We've been playing these DVDs for our baby at my wife's insistence. Since we didn't actually pay money for them, I haven't sweated it too much, but I have been curious about their real effectiveness.

3. # HHCon 02 Jul 2009 at 8:20 pm

My mother-in-law's baby could read at 2 and a half years old in the 1950s. Her first son learned the whole word approach and also learned to read from television. He read encyclopedia's by 5 years old. His principal, an Ed.D, used to give him college level texts to check him periodically for comprehension. He would get 99s on the Iowa Basic Reading Skills tests. \*

4. # HHCon 02 Jul 2009 at 8:45 pm

My favorite reading system was a phonetics system that I enjoyed in second grade. Thanks to my grammar school teachers, my parents bought me a pair of well-needed glasses by 10 years old. Those were very helpful indeed.

5. # taustinin 02 Jul 2009 at 8:47 pm

In my personal experience, the best way to teach children to read is to teach them to \*want\* to read. My earliest memories are of my older sister reading to me, books she like (some teenage detective stories). I cannot ever remember not loving books, not wanting to read. In the 6th grade, I was told by the school I was reading on a college junior level. And I was an honor role student all through high school, despite being an obnoxious ass.

6. # artfulDon 02 Jul 2009 at 8:49 pm

Your parents hadn't heard about glasses from another source up until that time?



NeuroLogica Blog » Your Baby Can Read – Not!

Page 3 of 8

7. # tmac57on 02 Jul 2009 at 10:46 pm  
artfulD- "Your parents hadn't heard about glasses from another source up until that time?"  
The same thing happened to me, only it was at age 12. I wasn't even aware that I needed them. Teachers are often the ones to 1st spot a child having vision problems.
8. # artfulDon 03 Jul 2009 at 12:16 am  
I was just curious whether HHC's tendency to drop in the occasional thought apropos of nothing was in some sense hereditary.
9. # superdaveon 03 Jul 2009 at 12:57 am  
I also became a good reader because I loved to read and that only encouraged me to read ever more challenging books. But it's hard to say which came first, did i love reading becuae I was good at it, or was I good at it because I loved it?
10. # artfulDon 03 Jul 2009 at 3:16 am  
If, as you first said, you became good because you loved it, you have answered the question and will soon need glasses.
11. # eiskrystalon 03 Jul 2009 at 3:30 am  
Or you could just read to your child while showing them the words.
12. # mpenningon 04 Jul 2009 at 11:36 pm  
Actually, the bogus Cambridge University Reading Test invalidates the whole word method. The letters are not "all mixed up." In fact, the consonants are in exact order--kind of like we text message. More on this on a blog I posted on this test at <http://penningtonpublishing.com/blog/reading/dick-and-jane-revisit-the-reading-wars/>
13. # relnzlgon 05 Jul 2009 at 11:08 am  
I am neither convinced nor unconvinced of the efficacy of these sorts of products. It doesn't matter to me, I think they're an extremely bad idea anyway--yes, whether they work or not.  
  
There is plenty of evidence that early reading does not equal better reading in the long run, nor a greater love of reading. It's just earlier, which seems like a poorly thought through goal, one that makes parents feel impressed with themselves.  
  
Aside from that, there are broad developmental goals that are important in early childhood that are not necessarily served by drilling children in memorization.  
  
Lastly, mpenning's comment, while interesting, is simply inaccurate. The consonants are NOT all in exact order, with only the vowels moved around. The first word, Arocdnieg, does not satisfy this claim, and neither do quite a number of other words in the passage.
14. # HHCon 13 Jul 2009 at 12:05 am  
Please note that the poster, otto\_ 10 July 2009 12:05pm should have his post inserted here instead of Skeptics Affirmation. The post is relevant to Your Baby Can Read – Not.
15. # mpenningon 13 Jul 2009 at 5:58 pm  
As an MA reading specialist, I've seen some crazy fads come and go. My favorite has to be the developmental reading strategy that was quite en vogue back in the 1970s and 1980s. It's assumption was that poor readers had missed a developmental stage along the way and that the best remediation was to revisit that stage to ensure that all of the synapses were properly hard-wired.  
  
The supposed correlate was that poor readers tended to never crawl as older babies. The reading therapy? You guessed it; poor readers were put on all fours and made to crawl.  
  
In your article, you mention the both/and, rather than the either/or option for integrating phonics and whole word learning. I tend to agree; however, the problem-solving approach is important in reading, i.e., readers should first attempt to decode (phonics) and then adjust to whole word (sight words) if the words are not phonetically regular.  
  
I have written articles on both sides of the coin: Phonics: <http://penningtonpublishing.com/blog/reading/top-ten-reasons-to-teach-phonics/> and Whole Words: <http://penningtonpublishing.com/blog/reading/how-to-teach-sight-words/>
16. # John Rullmanon 16 Sep 2009 at 3:16 pm  
Dear Dr. Novella,

As a fan of the SGU podcast from the beginning (well, for years – I've "caught up" from the beginning), I believe the skeptical movement can provide valuable instruction to people who do not ordinarily apply sound reasoning principles to the the news and marketing information to which they are continuously exposed. I actually don't care much for the notion of a skeptical "movement;" I think that tends to marginalize an intellectual process that should be characterized as common, right-headed, rational, sensible reasoning (still working on the winning catch-phrase). In any case, applying a skeptical eye to sales pitches is certainly a necessity in our society where, for the sake of turning a buck, things are often not what they are presented to be.

However, I believe your blog post fails the common consumer who would look to an authoritative voice in the skeptical movement for sound guidance in their consideration of Dr. Titzer's "Your Baby Can Read" product. You flirt with the real issue to the consumer, but ultimately remain primarily focused on the call-to-arms issue of the skeptical crusader. Worse than that, though, is that you seem to be willing indict the product with no more, or perhaps less, evidence than Dr. Titzer has available in making his claims. And worst of all – if you are advocating the adoption of rational thought processes in everyday decision-making, should you be including common rhetoric in the making of your case? I have a great deal of respect for your knowledge and your discipline of reason; I don't think your commentary in this case lives up to the standard that I find you to generally uphold.

Parents considering this product seek the answer, that suits their circumstances, to a singular question: "Is this product a worthwhile investment?" One of the issues to be considered in making this determination is "is there any published scholarship or valid scientific study to support the claims of product benefit?" But to confuse the latter question with the former as being the real issue to the consumer would be erroneous, and is by my observation an error too often committed in the name of the skeptical movement.

I am the father of a nine month old. My wife and I saw the infomercial for the "Your Baby Can Read" program. I consider myself to be a very skeptical person and a hard sell for the incredible claims of the typical infomercial. Having scrutinized the fine print of the trial evaluation offer, we decided that for the risk we would be taking, the product was worth a look. We are a week into the program, and our observations so far would be interesting from an anecdotal standpoint, but not what would constitute scientific evidence. The jury is still out on whether we will continue past the trial period, but early indications are promising.

During this trial interval, I am searching for valid evidence of the product's effectiveness outside of my own observation, and other useful perspectives that would contribute to my own decision-making. Your blog addresses an important question – the lack of published studies or other scientific evidence demonstrating the program's benefit makes the program's value more difficult to discern, if it exists at all. But, that there is an absence of studies that provide any finding of product efficacy means that scientific research has nothing to say on the matter one way or another. Therefore, I don't find a reasonable route to the absolute conclusion that the program does not have benefit.

I do not see where the company has made claims of benefit based on a "window of opportunity" for reading. Having examined the parents' guides for the program, I find that the company claims that an early start at learning to read is advantageous for maximizing ultimate reading potential, not that an opportunity for any level of reading ability will be missed. It appears that the "window of opportunity" interpretation was your own leap (I recall the discussion of the concept as it relates to language from a past SGU podcast).

I entirely agree that the marketing of the product incorporates some breakdowns of rational conclusion. The company fails to validate their reference to "studies" that would demonstrate long-term school or life performance advantage so as to allow a critique of the studies' design. And I would prefer to not see vague references to Dr. Titzer's scientific publishing if it is not relevant to the subject at hand. However, I think it is important to recognize the distinction between shortcomings in the marketing of a product and the fundamental merits of the product itself. The former poses a challenge to the determination of the latter, but we should not be led to an unsupported conclusion about any product by objections we may have to marketing technique. And in this case, I certainly don't see the egregious marketing crimes being committed that would lead to question of the basic integrity or ethics of the company or its principals.

"No scientific evidence of long term benefit" would be a reasonable skeptics finding to be made from the facts available. Disturbingly, though, you have peppered your commentary with numerous remarks ill-suited to a reasonable critique of the product claims or other available data:

- "... forcing kids to learn some task before their brains are naturally ready ..." Forcing? This is not consistent with the instructional guidance for the product, and inflammatory on your part. Has there been a determination that the brain of a toddler is not "naturally ready" to begin learning to read? If so, please elaborate.

- "You cannot force the brain to develop quicker or better." This is an apparent misread of the core claim of the program, that being that the time interval concurrent with explosive brain development is an advantageous time to begin teaching a child to read, not that you should teach your child to read at this time to stimulate explosive brain development. (An argument could be made that the latter is an implication of the program's marketing, and such an implication would be certainly be a marketing overreach, but this is not the issue that is of concern to the parent considering the merit of the product.)

- "... the whole 'baby genius' industry for anxious parents is misguided." Not sure how you would classify this logical fallacy or rhetorical maneuver, but it is untoward of you to imply that any parent who is attentive to the educational potential of their child is "anxious." Nor do I think it is exemplary skepticism to uniformly indict all products that would serve early child development objectives with a blanket indictment of the entire industry, or to identify them with a condescending label.

- "The Your Baby Can Read program is an extreme whole word approach" [sic]. Extreme? Other than for rhetorical effect, I don't see the validity of any characterization other than a "standard" or "regular" whole word approach. The program presents a singular



approach, but in the materials, Dr. Titzer actually espouses a blended approach, which would “seem practical” by your reckoning.

– “Critics ... claim,” “some even caution,” “others are critical ... of forced learning ...” There is a great deal of generalized negative implication, but little or no reliable fact in these remarks. Don’t we as skeptics have an obligation to live up to the same standards for quality argument that we demand of the objects of our criticism?

As a fan of you and your advocacy of critical thinking, it is difficult for me to read the concluding statement of your blog post. You may not have had the opportunity to respond to your audience’s inquiry with the benefit of an adequate examination of the product, but you should resist the inclination to pass such judgments without due diligence. The product does not offer an easy solution to the objective – the program involves a detailed process that proceeds over many months. How do you get to “gimicky?” The claims are not so amazing – you put in the work to teach a child to read, and they learn to read (in the generation in which I learned to read, a kindergartner that can read would have been pretty surprising). The process, properly applied, actually provides rewarding interaction between parent and child (that much is clear in the first week, before any indication of reading success is seen). Your entire conclusion is a swing and a miss.

Bottom line is that we are presented with a product that offers compelling benefits in the context of a somewhat revolutionary educational concept, for which there is no scientific finding available that speaks one way or another on the product’s efficacy. So we are left to consider a product based on a plausible notion and that purports to serve a worthy objective – improving the learning potential of children. As an “attentive” parent and an alert skeptic, I would say this product bears further examination. Unless valid scientific study emerges that addresses the product or the underlying principles, sound skepticism has little more to say.

With best regards,

John Rullman

17. : Steven Novella on 16 Sep 2009 at 6:51 pm

John,

Thanks for your thoughtful feedback. However, I disagree with your reading of my post. Essentially, you seem to agree with my core point – the company makes claims not backed by adequate evidence, but disagree with the form of my critique.

For example, you object to my use of the term “force” – but you misread my usage. This is not meant to be emotive – I use the term “force” to mean that you can make something happen ahead of schedule.

You also misread my use of the word “extreme” – again, this was used specifically to mean one end of a spectrum. I understand that the instructions include other techniques, but the core of the program and the way it is sold is at one end of the reading strategy spectrum.

Further, I disagree that all we can say is that this product lacks evidence. We do have a body of neurological research that indicates that as people mature they reach their intellectual potential, as long as they do not have a deprived environment. Doing extra or early work does not improve long term outcomes. So this is a reasonable default position unless there is evidence to suggest otherwise – which you agree, there isn’t.

And to clarify – I am not talking about fund of knowledge, but rather intellectual skills, like reading.

If the program encourages quality time between parent and child, fine. But then you could do this without spending any money on a program – which is what I recommended.

I also did not mean the term “anxious” to be derogatory. I am an anxious parent – all parents should be appropriately anxious. Anxiety is an adaptive trait. Appropriately concerned, anxious, motivated parents are easy to exploit by making them feel as if they are missing out if they don’t buy some product.

So I completely stand by my characterization that this product makes unsubstantiated claims, lacks plausibility, is conceptually problematic, and very deliberately exploits their target demographic.

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- [September 2009](#)
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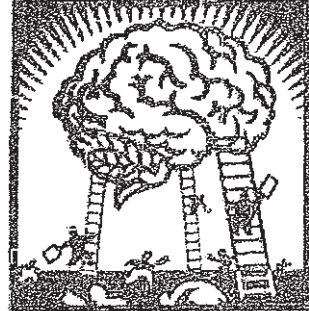
## BUILDING BABIES' BRAINS

When Audrey LeVine's son was 3 months old, she set up his bouncer seat in front of the television and popped in a videotape called "Baby Mozart."

"The tapes are supposed to make him develop and become more educated more quickly," says the Manhasset, N.Y., mom. "They have different children's toys moving in different sequences. I was hoping he would be stimulated by the shapes."

But Max wasn't interested.

"After a few minutes he would start fussing," says LeVine, a part-time attorney, who watched the tape six times with her son, who is now 11 months old. "He could cry, and he's not a crier. He wouldn't look at the television."



LeVine also has a videotape featuring classical music by Bach and one called "Baby Einstein," which matches songs and nursery rhymes in Hebrew, Japanese, German and Spanish to child-friendly visuals. (One Web site that sells the video, [www.smart-babies.com](http://www.smart-babies.com), suggests that it can increase a child's language power.)

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Such videos are among a growing trend of baby products claiming to stimulate brain growth during the first three years of life. Some — such as "Your Baby Can Read!" — aim to introduce babies as young as 3 months to the beginning concepts of reading. Others, including "Brainy Baby," go so far as to suggest the tapes can play a role in the development of a baby's right and left brain. There is also a "Baby Shakespeare" video and board book.

But that's not all. Baby-specific flash cards can be purchased or downloaded to your computer from [www.thesmartbaby.com](http://www.thesmartbaby.com), and "developmental" toys are a dime a dozen. Black-and-white shapes are designed to stimulate newborns, and colorful patterns are designed to maintain babies' interest.

LeVine now believes she introduced Max to the tapes at too early an age and plans to try again when he's older. And she isn't the only parent trying to boost her child's brain power in the early stages of life. Even the governor of Georgia suggested that all babies born in his state be given hourlong packages of classical music CDs and tapes in an attempt to foster the connection between music and math.

Laurie Segal, an early childhood development expert in Williston Park, N.Y., says these products can serve a purpose. "Some of it is about marketing and money, but some of it is valid," she says. "Some of them will create an interest in the child, will touch upon something we're unaware of."

The toys and videotapes may "please the baby, stimulate intellectual growth," Segal says. "But I don't think a parent should bank on these items, because no given item is going to change the basic makeup of the child."

There's widespread acceptance of the data demonstrating that children experience rapid brain growth between birth and age 3. In fact, research shows that stimulating babies' brains during this crucial growth period can have a lifelong impact on their ability to learn. However, it troubles some child development experts that companies use the research to convince parents to buy their products.

And, these days, babies seem to be getting more attention than ever before.

Still, many child development experts continue to scoff at what they see as obvious marketing ploys, and what irritates them most is the purported link between Mozart and increased intelligence and cognitive skills.

The popular "Baby Mozart" tape and others like it were developed after studies at the University of California at Irvine found a correlation between listening to Mozart and an increased ability in math, science and the performing arts. Since the

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research was conducted in 1993 and the phrase "the Mozart effect" was coined, a slew of baby products -- promoting the theory that classical music can stimulate an infant's brain development, sometimes even before birth -- have become available.

"There is no research that playing music to an infant changes their brain organization in any way that makes them smarter," says William H. Staso, a California educational psychologist who has written "Brain Under Construction" (Great Beginnings Press, \$19.95) and "Neural Foundations: What Stimulation Your Baby Needs to be Smart: Birth Through Seven Months" (Great Beginnings, \$19.95).

"The Mozart effect" is based on an experiment with college students who, after listening to the composer, were able to improve their memory for a short period of time. A second study at Irvine, in 1997, showed that giving music instruction to preschoolers improved their spatial skills.

"But for infants," he says, "just listening isn't going to make a difference."

According to Matthew Melmed, executive director of Zero to Three, a Washington, D.C., nonprofit organization that focuses on the first years of life, "I take the position, based on extensive research we have on the early years of life, that most of these products are useless. Some can even be harmful. Babies don't need a flat, one-dimensional screen that isn't responding to them. What babies need are relationships with a small number of adults who know them, who are capable of reading and responding to their cues in a sensitive fashion. Products that are designed to essentially have them not interact with adults will do nothing toward that. You can't buy a relationship."

Doris Fromberg, director of early childhood teacher education at Hofstra University in Hempstead, N.Y., agrees.

"Secure attachment to a significant adult or adults is very central to the growth process. I don't know that some commercial video can do that for you. The other big piece that helps children in infancy is they are really saturated by those attached adults with rich language experience in the context of everyday things they do. I call it verbal harmony. When a child is doing something, the parent says, 'Oh, you're eating with a spoon, or pushing the green peas off the table. Oh, you've dropped the teddy bear.' Talking about what the baby is doing helps language develop very strongly."

June Manicone of Great Neck, N.Y., has been doing that with her daughter, Alexandria, who turned 2 in February, and believes her daughter seems more advanced than other children her age. Manicone says she has been making sounds to Alexandria, talking to her and holding her close to her since the day she was born.

"I put music in the day she came home. I sing lullabies to her," she said.

And the 32-year-old stay-at-home mom has never stopped engaging her child in conversation. "I always told her what I was doing, even when I was cooking. She'd want attention, and I'd talk to her. I read to her constantly. She's actually reading books with me. She remembers the pictures. I'll read and stop, and she'll give the next answer. She already knows her shapes, her colors. She talks in full sentences. She's learning."

(Debbe Geiger is a free-lance writer specializing in health and science. She is based on Long Island, N.Y.)

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Page 1 of 9



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Page 2 of 9

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Page 5 of 9

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Except for User Submissions (as defined below), all content on the Site is the property of YOUR BABY CAN READ! and/or its licensors and is subject to copyright, trademark and other intellectual property rights under United States and foreign laws and international conventions, including without limitation, the design, source code, text, software, scripts, graphics, images, photographs, sounds, music, videos, video and audio files, interactive features and the like, and the selection, arrangement, structure, coordination, and "look and feel" thereof (collectively the "Content"), together with the trademarks, service marks and logos contained therein ("Marks").

All YOUR BABY CAN READ! product names, slogans, graphics, page headers, logos, button icons, and scripts on the Site are either trademarks or service marks, in the United States and other countries, of YOUR BABY CAN READ! or its affiliates, subsidiaries, suppliers and licensors and are the property of YOUR BABY CAN READ!. Unauthorized use, whether or not such use is tied to any commercial endeavors, is strictly prohibited. Your Baby Can Read! trademarks may not be used in connection with any product or service that is not Your Baby Can Read!, in any manner that is likely to cause confusion among customers or in any manner that disparages or discredits Your Baby Can Read!. You may not use any metatags or any other "hidden text" utilizing YOUR BABY CAN READ! or any other name, trademark, service mark or product name of YOUR BABY CAN READ! without our permission. In addition, all page headers, custom graphics, button icons, and scripts are subject to copyright protection for the benefit of YOUR BABY CAN READ! and/or are the service marks, trademarks and/or trade dress of YOUR BABY CAN READ!, and may not be copied, imitated, or used, in whole or in part, without our prior written permission. Reference on the Site to any third party-owned products, services, processes, or other information, whether by trade name, trademark, manufacturer, supplier, or otherwise, does not constitute or imply endorsement, sponsorship or recommendation thereof by us. All other trademarks not owned by Your Baby Can Read!, its affiliates or its subsidiaries that appear on this site are the property of their respective owners, who may or may not be affiliated with, connected to, or sponsored by Your Baby Can Read!. Content on the Site is provided to you AS IS for your information and personal use only and may not be used, copied, reproduced, distributed, transmitted, broadcast, displayed, sold, licensed, or otherwise exploited for any other purposes whatsoever without the prior written consent of the respective owners.

YOUR BABY CAN READ! reserves all rights not expressly granted in and to the Site and the Content. You agree not to engage in the use, copying, or distribution of any of the Content other than expressly permitted herein, including any use, copying, or distribution of User Submissions of third parties obtained through the Site for any commercial purposes. You further

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12/28/2010

Terms of Use

Page 6 of 9

agree not to make derivative uses of the Site or the Content, or to use, frame or utilize framing techniques to enclose any portion of the Site, including the images found on the Site or any text or layout/design of any page or form contained on a page of the Site. If you download or print a copy of the Content for personal use, you must retain all copyright and other proprietary notices contained therein. You agree not to circumvent, disable or otherwise interfere with security related features of the Site or features that prevent or restrict use or copying of any Content or enforce limitations on use of the Site or the Content therein.

**User Submissions**

A. The Site may now or in the future permit the submission of videos, photographs or other communications submitted by you and other users ("User Submissions") and the hosting, sharing, and/or publishing of such User Submissions. You understand that, whether or not such User Submissions are published, YOUR BABY CAN READ! does not guarantee any confidentiality with respect to any submissions.

B. You shall be solely responsible for your own User Submissions and the consequences of posting or publishing them. In connection with User Submissions, you affirm, represent, and/or warrant that: (i) you own or have the necessary licenses, rights, consents, and permissions to use and authorize YOUR BABY CAN READ! to use all copyright, trademark, patent, trade secret or other proprietary rights in and to any and all User Submissions to enable inclusion and use of the User Submissions in the manner contemplated by the Site and these Terms of Use; and (ii) you have the written consent, release, and/or permission of each and every identifiable individual person in the User Submission to use the name or likeness of each and every such identifiable individual person sufficient to enable inclusion and use of the User Submissions in the manner contemplated by the Site and these Terms of Use.

C. You will retain all of your ownership rights in your User Submissions. However, by submitting the User Submissions to YOUR BABY CAN READ!, you hereby grant YOUR BABY CAN READ! a worldwide, non-exclusive, royalty-free, sublicenseable and transferable license to use, reproduce, distribute, prepare derivative works of, display, and perform the User Submissions in perpetuity in connection with the Site and YOUR BABY CAN READ!'s (and its affiliates', successors' and assigns') businesses, including without limitation: (i) for promoting and redistributing part or all of the Site (and derivative works thereof) in any media formats and through any media channels; and (ii) for inclusion in products and services to be marketed commercially by YOUR BABY CAN READ! (by way of example only, films, television programs, infomercials, interactive games, Internet sites, books and collectibles). You also hereby grant each user of the Site a non-exclusive license to access your User Submissions through the Site, and to use, reproduce, distribute, prepare derivative works of, display and perform such User Submissions as permitted through the functionality of the Site and under these Terms of Use.

Terms of Use

Page 7 of 9

D. In connection with User Submissions, you further agree that you will not: (i) submit material that is copyrighted, protected by trade secret or otherwise subject to third party proprietary rights, including privacy and publicity rights, unless you are the owner of such rights or have permission from their rightful owner to post the material and to grant YOUR BABY CAN READ! all of the license rights granted herein; (ii) publish falsehoods or misrepresentations that could damage YOUR BABY CAN READ! or any third party; (iii) submit material that is unlawful, obscene, defamatory, libelous, threatening, pornographic, harassing, hateful, racially or ethnically offensive, or encourages conduct that would be considered a criminal offense, gives rise to civil liability, violate any law, or is otherwise inappropriate; (iv) post advertisements or solicitations of business; or (v) impersonate another person. YOUR BABY CAN READ! does not endorse any User Submission or any opinion, recommendation, or advice expressed therein, and YOUR BABY CAN READ! expressly disclaims any and all liability in connection with User Submissions. YOUR BABY CAN READ! does not permit copyright infringing activities and infringement of intellectual property rights on its Site, and YOUR BABY CAN READ! will remove all Content and User Submissions if properly notified that such Content or User Submission infringes on another's intellectual property rights. YOUR BABY CAN READ! reserves the right to remove Content and User Submissions without prior notice. YOUR BABY CAN READ! may also terminate a User's access to its Site if such User is determined to be a repeat infringer. A repeat infringer is a User who has been notified of infringing activity more than twice and/or has had a User Submission removed from the Site more than twice. YOUR BABY CAN READ! also reserves the right to decide whether Content or a User Submission is appropriate and complies with these Terms of Use for violations other than copyright infringement and violations of intellectual property law, such as, but not limited to, pornography, obscene or defamatory material, or excessive length. YOUR BABY CAN READ! may remove such User Submissions and/or terminate a User's access for uploading such material in violation of these Terms of Use at any time, without prior notice and at its sole discretion.

E. In particular, if you are a copyright owner or an agent thereof and believe that any User Submission or other content infringes upon your copyrights, you may submit a notification pursuant to the Digital Millennium Copyright Act ("DMCA") by providing our Copyright Agent with the following information in writing (see 17 U.S.C. 512(c)(3) for further detail):

- (i) A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- (ii) Identification of the copyrighted work claimed to have been infringed; or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;
- (iii) Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled and information reasonably sufficient to permit the service provider to locate the material;

Terms of Use

Page 8 of 9

(iv) Information reasonably sufficient to permit the service provider to contact you, such as an address, telephone number, and, if available, an electronic mail;

(v) A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and

(vi) A statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

YOUR BABY CAN READ!'s designated Copyright Agent to receive notifications of claimed infringement is: YOUR BABY CAN READ! Copyright, Your Baby Can, LLC, 2320 Camino Vida Roble, suite 105, Carlsbad, CA 92011, or send an email to [customerservice@yourbabycan.com](mailto:customerservice@yourbabycan.com) with "YOUR BABY CAN READ! Copyright" in the subject line. For clarity, only DMCA notices should go to the Copyright Agent; any other feedback, comments, requests for technical support, and other communications should be directed to YOUR BABY CAN READ! customer service through [http://www.yourbabycanread.com/contact\\_us.php](http://www.yourbabycanread.com/contact_us.php). You acknowledge that, if you fail to comply with all of the requirements of this Section 4(D), your DMCA notice may not be valid.

F. You understand that, when using the YOUR BABY CAN READ! Site, you will be exposed to User Submissions from a variety of sources, and that YOUR BABY CAN READ! is not responsible for the accuracy, usefulness, safety, or intellectual property rights of, or relating to, such User Submissions. You further understand and acknowledge that you may be exposed to User Submissions that are inaccurate, offensive, indecent, or objectionable, and you agree to waive, and hereby do waive, any legal or equitable rights or remedies you have or may have against YOUR BABY CAN READ! with respect thereto, and agree to indemnify and hold YOUR BABY CAN READ!, its Owners/Operators, affiliates, and/or licensors, harmless to the fullest extent allowed by law regarding all matters related to your use of the site.

G. YOUR BABY CAN READ! permits you to link to materials on the Site for personal, non-commercial purposes only. In addition, YOUR BABY CAN READ! may choose to provide an "Embeddable Player" feature, which you may incorporate into your own personal, non-commercial website(s) for use in accessing the materials on the Site, provided that you include a prominent link back to the YOUR BABY CAN READ! website on the pages containing the Embeddable Player. YOUR BABY CAN READ! reserves the right to discontinue any aspect of the YOUR BABY CAN READ! Site at any time.

**Choice of Law and Forum**

These Terms are governed by California laws. Any action to enforce or

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12/28/2010



Terms of Use

Page 9 of 9

interpret them shall be brought and maintained exclusively in the Superior Court of the State of California in Los Angeles. The parties irrevocably submit to the jurisdiction of said court and waive all objections thereto and waive the right to remove such action to a Federal District Court.

**Severability and Integration**

Unless otherwise specified herein, these Terms of Use and the Privacy Policy constitute the entire agreement between you and Your Baby Can Read! and its affiliates with respect to this site and the Service and supersedes all prior or contemporaneous communications and proposals (whether oral, written, or electronic) between you and Your Baby Can Read! with respect to the Service. If any part of these Terms of Use or the Privacy Policy is held invalid or unenforceable, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining portions shall remain in full force and effect.

**Notice of Change**

Your Baby Can Read! may at any time revise these Terms of Use by updating this posting. You are bound by any such revisions and should therefore periodically visit this page to review the then current Terms of Use.



SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES  
NOTICE OF CASE ASSIGNMENT - UNLIMITED CIVIL CASE  
Case Number \_\_\_\_\_

BC458187

THIS FORM IS TO BE SERVED WITH THE SUMMONS AND COMPLAINT

Your case is assigned for all purposes to the judicial officer indicated below (Local Rule 7.3(c)). There is additional information on the reverse side of this form

ASSIGNED JUDGE	DEPT	ROOM	ASSIGNED JUDGE	DEPT	ROOM
Hon. Elihu M. Berle	1	534	Hon. Holly E. Kendig	42	416
Hon. J. Stephen Czuleger	3	224	Hon. Mel Red Recana	45	529
Hon. Luis A. Lavin	13	630	Hon. Debra Katz Weintraub	47	507
Hon. Terry A. Green	14	300	Hon. Elizabeth Allen White	48	506
Hon. Richard Frum	15	307	Hon. Conrad Aragon	49	509
Hon. Rita Miller	16	306	Hon. John Shepard Wiley Jr.	50	508
Hon. Richard E. Rico	17	309	Hon. Abraham Khan	51	511
Hon. Rex Heeseman	19	311	Hon. Susan Bryant-Deason	52	510
Hon. Kevin C. Brazile	20	310	Hon. John P. Shook	53	513
Hon. Zaven V. Siamian	23	315	Hon. Ernest M. Hiroshige	54	512
Hon. Robert L. Hess	24	314	Hon. Malcolm H. Mackey	55	515
Hon. Mary Ann Murphy	25	317	Hon. Michael Johnson	56	514
Hon. James R. Dunn	26	316	Hon. Ralph W. Dau	57	517
Hon. Yvette M. Palazuelos	28	318	Hon. Rolf M. Treu	58	516
Hon. John A. Kronstadt	30	400	Hon. David L. Minning	61	632
Hon. Alan S. Rosenfield	31	407	Hon. Michael L. Stern	62	600
Hon. Mary H. Stropel	32	406	Hon. Kenneth R. Freeman	64	601
Hon. Charles F. Palmer	33	409	Hon. Mark Mooney	68	617
Hon. Amy D. Hogue	34	408	Hon. Ramona See	69	621
Hon. Daniel Buckley	35	411	Hon. Soussan G. Bruguera	71	729
Hon. Gregory Alarcon	36	410	Hon. Ruth Ann Kwan	72	731
Hon. Joanne O'Donnell	37	413	Hon. Teresa Sanchez-Gordon	74	735
Hon. Maureen Duffy-Lewis	38	412	Hon. William F. Fahey	78	730
Hon. Michael C. Solner	39	415	Hon. Emilie H. Elias*	324	CCW
Hon. Michelle R. Rosenblatt	40	414	Other		
Hon. Ronald M. Sohigian	41	417			

\*Class Actions

All class actions are initially assigned to Judge Emilie H. Elias in Department 324 of the Central Civil West Courthouse (800 S. Commonwealth Ave., Los Angeles 90005). This assignment is for the purpose of assessing whether or not the case is complex within the meaning of California Rules of Court, rule 3.400. Depending on the outcome of that assessment, the class action case may be reassigned to one of the judges of the Complex Litigation Program or reassigned randomly to a court in the Central District.

Given to the Plaintiff/Cross-Complainant/Attorney of Record on \_\_\_\_\_ JOHN A. CLARKE, Executive Officer/Clerk  
By \_\_\_\_\_, Deputy Clerk

## INSTRUCTIONS FOR HANDLING UNLIMITED CIVIL CASES

The following critical provisions of the Chapter Seven Rules, as applicable in the Central District, are summarized for your assistance.

### APPLICATION

The Chapter Seven Rules were effective January 1, 1994. They apply to all general civil cases.

### PRIORITY OVER OTHER RULES

The Chapter Seven Rules shall have priority over all other Local Rules to the extent the others are inconsistent.

### CHALLENGE TO ASSIGNED JUDGE

A challenge under Code of Civil Procedure section 170.6 must be made within 15 days after notice of assignment for all purposes to a judge, or if a party has not yet appeared, within 15 days of the first appearance.

### TIME STANDARDS

Cases assigned to the Individual Calendaring Court will be subject to processing under the following time standards:

**COMPLAINTS:** All complaints shall be served within 60 days of filing and proof of service shall be filed within 90 days of filing.

**CROSS-COMPLAINTS:** Without leave of court first being obtained, no cross-complaint may be filed by any party after their answer is filed. Cross-complaints shall be served within 30 days of the filing date and a proof of service filed within 60 days of the filing date.

A Status Conference will be scheduled by the assigned Independent Calendar Judge no later than 270 days after the filing of the complaint. Counsel must be fully prepared to discuss the following issues: alternative dispute resolution, bifurcation, settlement, trial date, and expert witnesses.

### FINAL STATUS CONFERENCE

The Court will require the parties at a status conference not more than 10 days before the trial to have timely filed and served all motions in limine, bifurcation motions, statements of major evidentiary issues, dispositive motions, requested jury instructions, and special jury instructions and special jury verdicts. These matters may be heard and resolved at this conference. At least 5 days before this conference, counsel must also have exchanged lists of exhibits and witnesses and have submitted to the court a brief statement of the case to be read to the jury panel as required by Chapter Eight of the Los Angeles Superior Court Rules.

### SANCTIONS

The court will impose appropriate sanctions for the failure or refusal to comply with Chapter Seven Rules, orders made by the Court, and time standards or deadlines established by the Court or by the Chapter Seven Rules. Such sanctions may be on a party or if appropriate on counsel for the party.

This is not a complete delineation of the Chapter Seven Rules, and adherence only to the above provisions is therefore not a guarantee against the imposition of sanctions under Trial Court Delay Reduction. Careful reading and compliance with the actual Chapter Rules is absolutely imperative.

189/Casner  
#44585-060  
C Corp  
CM-010

COPY

<b>ATTORNEY OR PARTY WITHOUT ATTORNEY</b> <i>Please, State Bar number, and address:</i> Rachel L. Jensen (Bar No. 211456) Robbins Geller Rudman & Dowd LLP 655 West Broadway, Suite 1900, San Diego, CA 92101 TELEPHONE NO.: 619/231-1058 FAX NO.: 619/231-7423 ATTORNEY FOR (Name): F. Beth Gasner, on Behalf of Herself and All Others Similarly Situated		<b>FOR COURT USE ONLY</b> <b>CONFORMED COPY</b> <b>OF ORIGINAL FILED</b> <b>Los Angeles Superior Court</b>  <b>DEC 29 2010</b>  John A. Clarke, Executive Officer/Clerk By <i>[Signature]</i> Deputy <b>DAWN ALEXANDER</b>  CASE <b>BT452137</b>  JUDGE CLERK
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 North Hill St. MAILING ADDRESS: CITY AND ZIP CODE: Los Angeles, 90012 BRANCH NAME: Stanley Mosk Courthouse CASE NAME: Gasner v. Your Baby Can, LLC et al.		
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000)	<input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)	
<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<input type="checkbox"/> <b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <input type="checkbox"/> <b>Other PUPD/WO (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PUPD/WO (23) <input type="checkbox"/> <b>Non-PUPD/WO (Other) Tort</b> <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PUPD/WO tort (35) <input type="checkbox"/> <b>Employment</b> <input type="checkbox"/> Wrongful termination (38) <input type="checkbox"/> Other employment (15)	<input type="checkbox"/> <b>Contract</b> <input checked="" type="checkbox"/> Breach of contract/warranty (05) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (06) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <input type="checkbox"/> <b>Real Property</b> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (28) <input type="checkbox"/> <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <input type="checkbox"/> <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<input type="checkbox"/> <b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxics tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <input type="checkbox"/> <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <input type="checkbox"/> <b>Miscellaneous Civil Complaint</b> <input checked="" type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <input type="checkbox"/> <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- a. ☒ Large number of separately represented parties d. ☐ Large number of witnesses  
b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☒ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court  
c. ☒ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): 6
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)
- Date: December 29, 2010

Rachel L. Jensen  
(TYPE OR PRINT NAME)

*Rachel Jensen with permission*  
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Form Adopted for Mandatory Use  
Judicial Council of California  
CM-010 (Rev. July 1, 2007)

CIVIL CASE COVER SHEET

Page 1 of 2  
Cal. Rules of Court, rules 2.30, 3.220, 3.400-3.403, 3.740;  
Cal. Standards of Judicial Administration, std. 3.19  
www.courtinfo.ca.gov



## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

## CASE TYPES AND EXAMPLES

## Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death  
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

## Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)  
Asbestos Property Damage  
Asbestos Personal Injury/Wrongful Death  
Product Liability (*not asbestos or toxic/environmental*) (24)  
Medical Malpractice (45)  
Medical Malpractice—Physicians & Surgeons  
Other Professional Health Care Malpractice  
Other PI/PD/WD (23)  
Premises Liability (e.g., slip and fall)  
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)  
Intentional Infliction of Emotional Distress  
Negligent Infliction of Emotional Distress  
Other PI/PD/WD

## Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)  
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)  
Defamation (e.g., slander, libel) (13)  
Fraud (16)  
Intellectual Property (19)  
Professional Negligence (25)  
Legal Malpractice  
Other Professional Malpractice (*not medical or legal*)  
Other Non-PI/PD/WD Tort (35)

## Employment

Wrongful Termination (36)  
Other Employment (15)

## Contract

Breach of Contract/Warranty (06)  
Breach of Rental/Lease  
Contract (*not unlawful detainer or wrongful eviction*)  
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)  
Negligent Breach of Contract/Warranty  
Other Breach of Contract/Warranty  
Collections (e.g., money owed, open book accounts) (09)  
Collection Case—Seller Plaintiff  
Other Promissory Note/Collections Case  
Insurance Coverage (*not provisionally complex*) (18)  
Auto Subrogation  
Other Coverage  
Other Contract (37)  
Contractual Fraud  
Other Contract Dispute

## Real Property

Eminent Domain/Inverse Condemnation (14)  
Wrongful Eviction (33)  
Other Real Property (e.g., quiet title) (26)  
Writ of Possession of Real Property  
Mortgage Foreclosure  
Quiet Title  
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

## Unlawful Detainer

Commercial (31)  
Residential (32)  
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

## Judicial Review

Asset Forfeiture (05)  
Petition Re: Arbitration Award (11)  
Writ of Mandate (02)  
Writ—Administrative Mandamus  
Writ—Mandamus on Limited Court Case Matter  
Writ—Other Limited Court Case Review  
Other Judicial Review (39)  
Review of Health Officer Order  
Notice of Appeal—Labor Commissioner Appeals

## Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)  
Construction Defect (10)  
Claims Involving Mass Tort (40)  
Securities Litigation (28)  
Environmental/Toxic Tort (30)  
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

## Enforcement of Judgment

Enforcement of Judgment (20)  
Abstract of Judgment (Out of County)  
Confession of Judgment (*non-domestic relations*)  
Sister State Judgment  
Administrative Agency Award (*not unpaid taxes*)  
Petition/Certification of Entry of Judgment on Unpaid Taxes  
Other Enforcement of Judgment Case

## Miscellaneous Civil Complaint RICO (27)

Other Complaint (*not specified above*) (42)  
Declaratory Relief Only  
Injunctive Relief Only (*non-harassment*)  
Mechanics Lien  
Other Commercial Complaint Case (*non-tort/non-complex*)  
Other Civil Complaint (*non-tort/non-complex*)

## Miscellaneous Civil Petition

Partnership and Corporate Governance (21)  
Other Petition (*not specified above*) (43)  
Civil Harassment  
Workplace Violence  
Elder/Dependent Adult Abuse  
Election Contest  
Petition for Name Change  
Petition for Relief From Late Claim  
Other Civil Petition

ORIGINAL

CM-015

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):                  Rachel L. Jensen (Bar No. 211456)                  Robbins Geller Rudman &amp; Dowd LLP                  655 West Broadway, Suite 1900                  San Diego, CA 92101                  TELEPHONE NO.: 619/231-1058 FAX NO. (Optional): 619/231-7423                  E-MAIL ADDRESS (Optional): RachelJ@rgrdlaw.com                  ATTORNEY FOR (Name): F. Beth Gasner, on Behalf of Herself and All Others Similarly Situated</p>	<p>FOR COURT USE ONLY  <b>FILED</b>                  Los Angeles Superior Court                    DEC 29 2010                    JOHN A. CLARKE, CLERK                  BY DAWN ALEXANDER, DEPUTY</p>
<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles                  STREET ADDRESS: 111 North Hill St.                  MAILING ADDRESS:                  CITY AND ZIP CODE: Los Angeles, CA 90012                  BRANCH NAME: Stanley Mosk Courthouse</p>	<p>CASE NUMBER: <b>BC450907</b>                  JUDICIAL OFFICER:</p>
<p>PLAINTIFF/PETITIONER: F. Beth Gasner, et al.                  DEFENDANT/RESPONDENT: Your Baby Can, LLC et al.</p>	<p>DEPT.:</p>
<p>NOTICE OF RELATED CASE</p>	

BY FAX

Identify, in chronological order according to date of filing, all cases related to the case referenced above.

1. a. Title: Johnson et al. v. Your Baby Can, LLC et al.  
 b. Case number: BC450907  
 c. Court: ☒ same as above  
☐ other state or federal court (name and address):  
 d. Department: D324 Emilie Elias  
 e. Case type: ☐ limited civil ☒ unlimited civil ☐ probate ☐ family law ☐ other (specify):  
 f. Filing date: 12/08/2010  
 g. Has this case been designated or determined as "complex?" ☒ Yes ☐ No  
 h. Relationship of this case to the case referenced above (check all that apply):  
☒ involves the same parties and is based on the same or similar claims.  
☒ arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.  
☐ involves claims against, title to, possession of, or damages to the same property.  
☒ is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.  
☐ Additional explanation is attached in attachment 1h  
 i. Status of case:  
☒ pending  
☐ dismissed ☐ with ☐ without prejudice  
☐ disposed of by judgment
2. a. Title:  
 b. Case number:  
 c. Court: ☐ same as above  
☐ other state or federal court (name and address):  
 d. Department:

CM-015

PLAINTIFF/PETITIONER: F. Beth Gasner, et al.	CASE NUMBER:
DEFENDANT/RESPONDENT: Your Baby Can, LLC et al.	

## 2. (continued)

- e. Case type: ☐ limited civil ☐ unlimited civil ☐ probate ☐ family law ☐ other (specify):
- f. Filing date:
- g. Has this case been designated or determined as "complex?" ☐ Yes ☐ No
- h. Relationship of this case to the case referenced above (check all that apply):
- ☐ involves the same parties and is based on the same or similar claims.
- ☐ arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
- ☐ involves claims against, title to, possession of, or damages to the same property.
- ☐ is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
- ☐ Additional explanation is attached in attachment 2h
- i. Status of case:
- ☐ pending
- ☐ dismissed ☐ with ☐ without prejudice
- ☐ disposed of by judgment

## 3. a. Title:

b. Case number:

c. Court: ☐ same as above☐ other state or federal court (name and address):

d. Department:

e. Case type: ☐ limited civil ☐ unlimited civil ☐ probate ☐ family law ☐ other (specify):

f. Filing date:

g. Has this case been designated or determined as "complex?" ☐ Yes ☐ No

h. Relationship of this case to the case referenced above (check all that apply):

- ☐ involves the same parties and is based on the same or similar claims.
- ☐ arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
- ☐ involves claims against, title to, possession of, or damages to the same property.
- ☐ is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
- ☐ Additional explanation is attached in attachment 3h

i. Status of case:

- ☐ pending
- ☐ dismissed ☐ with ☐ without prejudice
- ☐ disposed of by judgment

4. ☐ Additional related cases are described in Attachment 4. Number of pages attached: \_\_\_\_\_

Date: December 29, 2010

Rachel L. Jensen

(TYPE OR PRINT NAME OF PARTY OR ATTORNEY)

*Rachel Jensen / with permission*

(SIGNATURE OF PARTY OR ATTORNEY)

CM-015 (Rev July 1, 2007)

NOTICE OF RELATED CASE

Page 2 of 3

PLAINTIFF/PETITIONER: F. Beth Gasner, et al.	CASE NUMBER: CM-015
DEFENDANT/RESPONDENT: Your Baby Can, LLC et al.	

PROOF OF SERVICE BY FIRST-CLASS MAIL  
NOTICE OF RELATED CASE

(NOTE: You cannot serve the Notice of Related Case if you are a party in the action. The person who served the notice must complete this proof of service. The notice must be served on all known parties in each related action or proceeding.)

1. I am at least 18 years old and not a party to this action. I am a resident of or employed in the county where the mailing took place, and my residence or business address is (specify):
  2. I served a copy of the Notice of Related Case by enclosing it in a sealed envelope with first-class postage fully prepaid and (check one):
    - a. ☐ deposited the sealed envelope with the United States Postal Service.
    - b. ☐ placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.
  3. The Notice of Related Case was mailed:
    - a. on (date):
    - b. from (city and state):
  4. The envelope was addressed and mailed as follows:

<ol style="list-style-type: none"><li>a. Name of person served:</li><li>Street address:</li><li>City:</li><li>State and zip code:</li></ol> <ol style="list-style-type: none"><li>b. Name of person served:</li><li>Street address:</li><li>City:</li><li>State and zip code:</li></ol>	<ol style="list-style-type: none"><li>c. Name of person served:</li><li>Street address:</li><li>City:</li><li>State and zip code:</li></ol> <ol style="list-style-type: none"><li>d. Name of person served:</li><li>Street address:</li><li>City:</li><li>State and zip code:</li></ol>
--	--
- ☐ Names and addresses of additional persons served are attached. (You may use form POS-030(P).)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)



NOTICE SENT TO:

Rudman, Samuel L.  
Robbins Geller Rudman & Dowd LLP  
58 South Service Road, Suite 200  
Melville NY 11747

**FILED**  
LOS ANGELES SUPERIOR COURT

JAN 27 2011

JOHN A. CLARKE, CLERK

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

F BETH GASNER

Plaintiff(s),

VS.

YOUR BABY CAN LLC ET AL

Defendant(s).

CASE NUMBER

BC452137

**NOTICE OF CASE  
MANAGEMENT CONFERENCE**

TO THE PLAINTIFF(S)/ATTORNEY(S) FOR PLAINTIFF(S) OF RECORD:

You are ordered to serve this notice of hearing on all parties/attorneys of record forthwith, and meet and confer with all parties/attorneys of record about the matters to be discussed no later than 30 days before the Case Management Conference.

Your Case Management Conference has been scheduled for April 28, 2011 at 8:30 am in Dept. 17 at 111 North Hill Street, Los Angeles, California 90012.

**NOTICE TO DEFENDANT: THE SETTING OF THE CASE MANAGEMENT CONFERENCE DOES NOT EXEMPT THE DEFENDANT FROM FILING A RESPONSIVE PLEADING AS REQUIRED BY LAW.**

Pursuant to California Rules of Court, rules 3.720-3.730, a completed Case Management Statement (Judicial Council form # CM-110) must be filed at least 15 calendar days prior to the Case Management Conference. The Case Management Statement may be filed jointly by all parties/attorneys of record or individually by each party/attorney of record. You must be familiar with the case and be fully prepared to participate effectively in the Case Management Conference.

At the Case Management Conference, the Court may make pretrial orders including the following, but not limited to, an order establishing a discovery schedule; an order referring the case to Alternative Dispute Resolution (ADR); an order reclassifying the case; an order setting subsequent conference and the trial date; or other orders to achieve the goals of the Trial Court Delay Reduction Act (Gov. Code, section 68600 et seq.)

Notice is hereby given that if you do not file the Case Management Statement or appear and effectively participate at the Case Management Conference, the Court may impose sanctions pursuant to LASC Local Rule 7.13, Code of Civil Procedure sections 177.5, 575.2, 583.150, 583.360 and 583.410, Government Code Section 68608 (b), and California Rules of Court 2.2 et seq.

Date: January 27, 2011

**CERTIFICATE OF SERVICE**

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Notice of Case Management Conference upon each party or counsel named above:

☒ by depositing in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed herein in a separate sealed envelope to each address as shown above with postage thereon fully prepaid.

☐ by personally giving the party notice upon filing the complaint.

Date: January 27, 2011

John A. Clarke, Executive Officer/Clerk

by [Signature] Deputy Clerk

LACIV 32 (Rev. 09/07)  
LASC Approved 10-03

Cal. Rules of Court, rule 3.720-3.730  
LASC Local Rules, Chapter Seven

NOTICE SENT TO:

Rudman, Samuel L.  
Robbins Geller Rudman & Dowd LLP  
58 South Service Road, Suite 200  
Melville NY 11747

FILED  
LOS ANGELES SUPERIOR COURT

JAN 27 2011

JOHN A. CLARKE, CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

CASE NUMBER

BC452137

F BETH GASNER

Plaintiff(s),

VS.

YOUR BABY CAN LLC ET AL

Defendant(s).

ORDER TO SHOW CAUSE HEARING

To the party/attorney of record:

You are ordered to appear for an Order to Show Cause Hearing on February 28, 2011 at 8:30 am in Dept. 17 of this court, Central District, 111 North Hill Street, Los Angeles, California 90012, and show cause why sanctions should not be imposed for:

Failure to file Proof of Service of ☒ Petition ☒ Summons and ☒ Complaint ☐ Cross-Complaint pursuant to California Rules of Court, rule 3.110(b) and (c) as to: ALL DEFENDANTS

Failure to comply or appear may result in sanctions, pursuant to one or more of the following: California Rules of Court, rule 2.30, and rule 3.1340; Code of Civil Procedure sections 177.5, 575.2, 583.150, 583.310, 583.360, 583.410, 583.420, 583.430; and Government Code section 68608.

☒ To avoid a mandatory appearance all required documents must be filed in ☐ this Dept ☒ Clerk's Office, Room 102 at least 5 court days prior to the date of the hearing.

☐ The Court may infer from your failure to appear that possession of the premises is no longer at issue, and that your case is not entitled to preference in setting pursuant to Code of Civil Procedure section 1179a.

☐ You are ordered to give notice of said hearing forthwith to any party served with summons and complaint prior to OSC Hearing and file a Proof of Service in this department or Clerk's Office at least 5 court days prior to the date of the hearing.

Dated: January 27, 2011

Judicial Officer  
RICHARD E. RICO

CERTIFICATE OF MAILING

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Order to Show Cause Hearing upon each party or counsel named above by depositing in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown above with the postage thereon fully prepaid.

Date: January 27, 2011

John A. Clarke, EXECUTIVE OFFICER/CLERK

By [Signature], Deputy Clerk

ORDER TO SHOW CAUSE HEARING

LACIV 166-1 (Rev. 09/08)  
LASC Approved 06-04

LASC Local Rules, Chapter 7  
Cal. Rules of Court, rule 2.30

COPY

CATES PETERSON LLP  
MARK D. PETERSON (Bar No. CA 126174)  
E-Mail: markpeterson@catespeterson.com  
4100 Newport Place, Suite 230  
Newport Beach, California 92660  
Phone: (949) 724-1180  
Facsimile: (949) 724-1190

CONFORMED COPY  
OF ORIGINAL FILED  
Los Angeles Superior Court

FEB 14 2011

John A. Clarke, Executive Officer/Clerk  
By A.E. LaFleur-Clayton, Deputy

*Attorneys for Defendant*  
Robert Titzer, Ph.D.

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

F. BETH GASNER, on behalf of herself  
and All Persons Similarly Situated,

Plaintiffs,

vs.

YOUR BABY CAN LLC; ROBERT  
TITZER, Ph.D.,

Defendants.

Case No. BC452137

DEFENDANT ROBERT TITZER, PH.D.'S  
ANSWER TO PLAINTIFF'S UNVERIFIED  
COMPLAINT

Date Filed: December 29, 2010

Trial Date: None Set

Defendant Robert Titzer, Ph.D., answering the plaintiff's unverified complaint for himself  
alone, responds as follows:

**GENERAL DENIAL**

1. Pursuant to Section 431.30(d) of the California Code of Civil Procedure, Dr. Titzer  
generally denies each and every allegation in the complaint and denies that plaintiff is entitled to  
the relief sought, or that plaintiff has been damaged in any manner.

**AFFIRMATIVE DEFENSES**

2. As separate and distinct affirmative defenses to the complaint, Dr. Titzer alleges as  
follows:

DEFENDANT ROBERT TITZER, PH.D.'S ANSWER TO COMPLAINT

Exhibit A Page 90

**FIRST AFFIRMATIVE DEFENSE**

(Failure to State Facts Sufficient to Constitute Cause of Action)

3. The complaint, and each of the causes of action, fails to state facts sufficient to constitute a cause of action against Dr. Titzer.

**SECOND AFFIRMATIVE DEFENSE**

(Lack of Standing)

4. On information and belief, plaintiff lacks standing to sue under the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq* ("UCL") because she has not suffered an injury in fact and a loss of money or property.

**THIRD AFFIRMATIVE DEFENSE**

(Freedom of Speech)

5. Because they constitute truthful and non-misleading speech, the advertisements challenged in the complaint are entitled to protection under the First Amendment of the United States Constitution, as well as the right to free speech protected under the California Constitution.

**FOURTH AFFIRMATIVE DEFENSE**

(Laches)

6. Plaintiff's action is barred by the equitable doctrine of laches.

**FIFTH AFFIRMATIVE DEFENSE**

(Statutes of Limitations)

7. Each cause of action in the complaint is barred by the relevant statute of limitations, including but not limited to Code of Civil Procedure Sections 337(1), 338(a), (d), and (h) and 343, Cal. Bus. & Prof. Code § 17208, and any applicable contractual limitations period.

**SIXTH AFFIRMATIVE DEFENSE**

(Unclean Hands)

8. Each cause of action in the complaint is barred by the doctrine of unclean hands.

**SEVENTH AFFIRMATIVE DEFENSE**

(Estoppel)

9. Plaintiff is estopped from claiming or recovering the damages and/or other relief sought in the complaint.

**EIGHTH AFFIRMATIVE DEFENSE**

(Waiver)

10. Plaintiff, by her acts and/or omissions, has waived any right to recover for the causes of action alleged in the complaint.

**NINTH AFFIRMATIVE DEFENSE**

(Consent)

11. Plaintiff consented to the acts alleged in the complaint by voluntarily signing up for the services provided by Your Baby Can, LLC.

**TENTH AFFIRMATIVE DEFENSE**

(Plaintiff Lacks Standing to Seek Injunctive Relief Under UCL)

12. Plaintiff lacks standing to seek injunctive relief under the UCL because she has no ongoing contractual or other relationship with Your Baby Can, LLC or Dr. Titzer and, therefore, is not personally threatened by the misconduct alleged.

**ELEVENTH AFFIRMATIVE DEFENSE**

(Insubstantial Consumer Harm Precludes "Unfairness")

13. The harm to consumers, if any, from Your Baby Can, LLC's or Dr. Titzer's alleged business practices is insubstantial. The absence of substantial injury to consumers precludes a finding of "unfairness" and, accordingly, plaintiff's UCL claims are without merit.

**TWELFTH AFFIRMATIVE DEFENSE**

(The Challenged Practices' Utility Precludes "Unfairness" under UCL)

14. The harm, if any, attributable to Your Baby Can LLC's or Dr. Titzer's alleged business practices is outweighed by the utility of those practices. The presence of such countervailing utility precludes a finding of "unfairness" and, accordingly, the UCL claims for relief are without merit.

**THIRTEENTH AFFIRMATIVE DEFENSE**

(Countervailing Benefits to Consumers Preclude Unfairness under UCL)

15. The harm, if any, attributable to Your Baby Can LLC's or Dr. Titzer's alleged business practices is outweighed by countervailing benefits to consumers. The presence of such countervailing consumer benefits precludes a finding of "unfairness" and, accordingly, the UCL claims for relief are without merit.

**FOURTEENTH AFFIRMATIVE DEFENSE**

(Conduct Not Unlawful)

16. The complaint and alleged causes of action, and each of them, are barred because Your Baby Can, LLC's and Dr. Titzer's practices as alleged are not "unlawful" within the meaning of Cal. Bus. & Prof. Code §§ 17200 or 17500.

**FIFTEENTH AFFIRMATIVE DEFENSE**

(Conduct Not Fraudulent or Deceptive)

17. The complaint and alleged causes of action, and each of them, are barred because the alleged practices are not "fraudulent" or "deceptive" within the meaning of Cal. Bus. & Prof. Code § 17200.

**SIXTEENTH AFFIRMATIVE DEFENSE**

(Plaintiff's Claims Not Typical)

18. On information and belief, this case is not suitable for class certification because, among other reasons, plaintiff's claims are not typical of the putative class she purports to represent.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

(Plaintiff Does Not Adequately Represent the Putative Class)

19. On information and belief, plaintiff is not an adequate class representatives of the putative class.



**EIGHTEENTH AFFIRMATIVE DEFENSE**

(Common Issues Do Not Predominate)

20. On information and belief, class treatment is not proper because common issues of law and facts do not predominate over individual issues.

**NINETEENTH AFFIRMATIVE DEFENSE**

(Lack of Damages)

21. Plaintiff's damages, if any, are *de minimis*. Therefore, plaintiff cannot establish that class treatment would substantially benefit both the litigants and the court.

**TWENTIETH AFFIRMATIVE DEFENSE**

(No Basis for Attorneys' Fees)

22. The complaint fails to state facts that would entitle plaintiff to recover attorneys' fees.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

(Failure to Mitigate)

23. Dr. Titzer is informed and believes, and on that basis alleges, that at all times relevant, plaintiff has failed, neglected and refused to mitigate damages, if any, thus barring, or at least reducing, any recovery to which plaintiff might be entitled in this lawsuit.

WHEREFORE, Dr. Titzer prays as follows:

1. That plaintiff take nothing by way of the complaint and that the complaint be dismissed;
2. That judgment be entered against plaintiff and in favor of Dr. Titzer;
3. That Dr. Titzer be awarded his costs of suit; and
4. For such other and further relief as this Court deems just and proper.

Dated: February 10, 2011

CATES PETERSON LLP

By:

*Mark Peterson*  
Mark D. Peterson  
Attorneys for Defendant  
ROBERT TITZER, PH.D.

**PROOF OF SERVICE**

***F. Beth Gasner etc. et al. v. Your Baby Can LLC; Robert Titzer, Ph.D.***  
**Los Angeles County Superior Court Case No. BC 452137**

I, Paulette E. Surjue, declare as follows:

I am employed in Los Angeles County, Los Angeles, California. I am over the age of eighteen years and not a party to this action. My business address is MANATT, PHELPS & PHILLIPS, LLP, 11355 West Olympic Boulevard, Los Angeles, California 90064-1614. On February 14, 2011, I served the within:

**DEFENDANT ROBERT TITZER, PH.D.'S ANSWER TO PLAINTIFF'S UNVERIFIED COMPLAINT**

on the interested parties in this action addressed as follows:

Rachel L. Jensen, Esq.  
Robbins Geller Rudman Dowd LLP  
655 West Broadway, Suite 1900  
San Diego, CA 92101  
Telephone: (619) 231-1058  
Facsimile: (619) 231-7423

Samuel H. Rudman, Esq.  
Robert M. Rothman, Esq.  
Mark S. Reich, Esq.  
Edward Y. Kroub, Esq.  
Robins Geller Rudman & Dowd LLP  
58 South Service Road, Suite 200  
Melville, NY 11747  
Telephone: (631) 367-7100  
Facsimile: (631) 367-1173



(BY MAIL) By placing such document(s) in a sealed envelope, with postage thereon fully prepaid for first class mail, for collection and mailing at Manatt, Phelps & Phillips, LLP, Los Angeles, California following ordinary business practice. I am readily familiar with the practice at Manatt, Phelps & Phillips, LLP for collection and processing of correspondence for mailing with the United States Postal Service, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal Service the same day as it is placed for collection.



(BY OVERNIGHT MAIL) By placing such document(s) in a sealed envelope, for collection and overnight mailing at Manatt, Phelps & Phillips, LLP, Los Angeles, California following ordinary business practice. I am readily familiar with the practice at Manatt, Phelps & Phillips, LLP for collection and processing of overnight service mailing, said practice being that in the ordinary course of business, correspondence is deposited with the overnight messenger service, \_\_\_\_\_, for delivery as addressed.



(BY PERSONAL SERVICE) By causing such document(s) to be delivered by hand, as addressed by delivering same to \_\_\_\_\_ with instructions that it be personally served.

☐

(BY FACSIMILE) By transmitting (or causing to be transmitted) such document(s) by use of facsimile machine telephone number (310) 312-4224 at [time] to the parties at the facsimile numbers listed on the service list above. The facsimile machine used complies with California Rules of Court, Rule 2003(3). The transmission was reported as complete and no error was reported by the machine. I caused the transmitting machine to print a record of the transmission, a copy of which is attached to this declaration.


☐

(BY ELECTRONIC MAIL) By transmitting such document(s) electronically at [time] from my e-mail address, psurjue@manatt.com at Manatt, Phelps & Phillips, LLP, Los Angeles, California, to the person(s) at the electronic mail addresses listed above. The transmission was reported as complete and without error.

☐

(BY PUC E-MAIL SERVICE) By transmitting such document(s) electronically from Manatt, Phelps & Phillips, LLP, Los Angeles, California, to the electronic mail addresses listed above. I am readily familiar with the practices of Manatt, Phelps & Phillips, LLP for transmitting documents by electronic mail, said practice being that in the ordinary course of business, such electronic mail is transmitted immediately after such document has been tendered for filing. Said practice also complies with Rule 2.3(b) of the Public Utilities Commission of the State of California and all protocols described therein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on February 14, 2011, at Los Angeles, California.

  
PAULETTE E. SURJUE

COPY

MANATT, PHELPS & PHILLIPS, LLP  
BRAD W. SEILING (Bar No. CA 143515)  
CHAD S. HUMMEL (Bar No. CA 139055)  
ERIN C. WITKOW (Bar No. CA 216994)  
11355 West Olympic Boulevard  
Los Angeles, CA 90064-1614  
Telephone: (310) 312-4000  
Facsimile: (310) 312-4224

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OF ORIGINAL FILED  
Los Angeles Superior Court

FEB 14 2011

John A. Clarke, Executive Officer/Clerk  
By A.E. LaFleur-Clayton, Deputy

Attorneys for Defendant  
Your Baby Can LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

F. BETH GASNER, on behalf of herself  
and All Persons Similarly Situated,

Plaintiffs,

vs.

YOUR BABY CAN LLC; ROBERT  
TITZER, Ph.D.,

Defendants.

Case No. BC452137

**DEFENDANT YOUR BABY CAN LLC'S  
ANSWER TO PLAINTIFF'S COMPLAINT**

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Complaint Filed: December 29, 2010  
Trial Date: None Set

Defendant Your Baby Can LLC ("YBC") answers the complaint of plaintiff F. Beth Gasner ("Plaintiff") as follows:

**GENERAL DENIAL**

Pursuant to Section 431.30(d) of the California Code of Civil Procedure, Defendant generally denies each and every allegation in the Complaint and denies that Plaintiff is entitled to the relief sought, or that Plaintiff has been damaged in any manner.

**AFFIRMATIVE DEFENSES**

As separate and distinct affirmative defenses to the Complaint, Defendant alleges as follows:

**FIRST AFFIRMATIVE DEFENSE**

(Failure to State Facts Sufficient to Constitute Cause of Action)

The Complaint, and each of the causes of action, fails to state facts sufficient to constitute a cause of action against Defendant.

**SECOND AFFIRMATIVE DEFENSE**

(Lack of Standing)

On information an belief, Plaintiff lacks standing to sue under the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq* ("UCL") because she has not suffered an injury in fact and a loss of money or property.

**THIRD AFFIRMATIVE DEFENSE**

(Freedom of Speech)

Because they constitute truthful and non-misleading speech, the advertisements challenged in the Complaint are entitled to protection under the First Amendment of the United States Constitution, as well as the right to free speech protected under the California Constitution.

**FOURTH AFFIRMATIVE DEFENSE**

(Laches)

Plaintiff's action is barred by the equitable doctrine of laches.

**FIFTH AFFIRMATIVE DEFENSE**

(Statutes of Limitations)

Each cause of action in the Complaint is barred by the relevant statute of limitations, including but not limited to Code of Civil Procedure Sections 337(1), 338(a), (d), and (h), and 343, Cal. Bus. & Prof. Code § 17208, and any applicable contractual limitations period.

**SIXTH AFFIRMATIVE DEFENSE**

(Unclean Hands)

Each cause of action in the Complaint is barred by the doctrine of unclean hands.

**SEVENTH AFFIRMATIVE DEFENSE**

(Estoppel)

Plaintiff is estopped from claiming or recovering the damages and/or other relief sought in the Complaint.

**EIGHTH AFFIRMATIVE DEFENSE**

(Waiver)

Plaintiff, by her acts and/or omissions, has waived any right to recover for the causes of action alleged in the Complaint.

**NINTH AFFIRMATIVE DEFENSE**

(Consent)

Plaintiff consented to the acts alleged in the Complaint by voluntarily signing up for the services provided by Defendant.

**TENTH AFFIRMATIVE DEFENSE**

(Plaintiff Lacks Standing to Seek Injunctive Relief Under UCL)

Plaintiff lacks standing to seek injunctive relief under the UCL because she has no ongoing contractual or other relationship with Defendant and, therefore, is not personally threatened by the misconduct alleged.

**ELEVENTH AFFIRMATIVE DEFENSE**

(Insubstantial Consumer Harm Precludes "Unfairness")

The harm to consumers, if any, from Defendant's alleged business practices is insubstantial. The absence of substantial injury to consumers precludes a finding of "unfairness" and, accordingly, Plaintiff's UCL claim is without merit.

**TWELFTH AFFIRMATIVE DEFENSE**

(The Challenged Practices' Utility Precludes "Unfairness" under UCL)

The harm, if any, attributable to Defendant's alleged business practices is outweighed by the utility of those practices. The presence of such countervailing utility precludes a finding of "unfairness" and, accordingly, the UCL claim is without merit.



**THIRTEENTH AFFIRMATIVE DEFENSE**

(Countervailing Benefits to Consumers Preclude Unfairness under UCL)

The harm, if any, attributable to Defendant's alleged business practices is outweighed by countervailing benefits to consumers. The presence of such countervailing consumer benefits precludes a finding of "unfairness" and, accordingly, the UCL claim is without merit.

**FOURTEENTH AFFIRMATIVE DEFENSE**

(Conduct Not Unlawful)

The Complaint and alleged causes of action, and each of them, are barred because Defendant's practices as alleged are not "unlawful" under the UCL.

**FIFTEENTH AFFIRMATIVE DEFENSE**

(Conduct Not Fraudulent or Deceptive)

The Complaint and alleged causes of action, and each of them, are barred because Defendant's practices as alleged are not "fraudulent" or "deceptive" under the UCL.

**SIXTEENTH AFFIRMATIVE DEFENSE**

(Plaintiff's Claims Not Typical)

On information and belief, this case is not suitable for class certification because, among other reasons, Plaintiff's claims are not typical of the putative class she purports to represent.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

(Plaintiff Does Not Adequately Represent the Putative Class)

On information and belief, Plaintiff is not an adequate class representatives.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

(Common Issues Do Not Predominate)

On information and belief, class treatment is not proper because common issues of law and fact do not predominate over individual issues.

**NINETEENTH AFFIRMATIVE DEFENSE**

(No Basis for Attorneys' Fees)

The Complaint fails to state facts that would entitle Plaintiff to recover attorneys' fees.

**TWENTIETH AFFIRMATIVE DEFENSE**

(Failure to Mitigate)

Defendant is informed and believes, and on that basis alleges, that at all times relevant, Plaintiff has failed, neglected and refused to mitigate damages, if any, thus barring, or at least reducing, any recovery to which Plaintiff might be entitled in this lawsuit.

WHEREFORE, Defendant prays as follows:

1. That Plaintiff take nothing by way of the complaint and that the complaint be dismissed;
2. That judgment be entered against Plaintiff and in favor of Defendant;
3. That Defendant be awarded its costs of suit herein; and
4. For such other and further relief as this Court deems just and proper.

Dated: February 14, 2011

MANATT, PHELPS & PHILLIPS, LLP  
Brad W. Seiling  
Chad S. Hummel  
Erin C. Witkow

By: 

Brad W. Seiling  
Attorneys for Defendant  
YOUR BABY CAN LLC

300194533.1

**PROOF OF SERVICE**

***F. Beth Gasner etc. et al. v. Your Baby Can LLC; Robert Titzer, Ph.D.***  
**Los Angeles County Superior Court Case No. BC 452137**

I, Paulette E. Surjue, declare as follows:

I am employed in Los Angeles County, Los Angeles, California. I am over the age of eighteen years and not a party to this action. My business address is MANATT, PHELPS & PHILLIPS, LLP, 11355 West Olympic Boulevard, Los Angeles, California 90064-1614. On February 14, 2011, I served the within:

**DEFENDANT YOUR BABY CAN LLC'S ANSWER TO PLAINTIFF'S COMPLAINT**

on the interested parties in this action addressed as follows:

Rachel L. Jensen, Esq.  
Robbins Geller Rudman Dowd LLP  
655 West Broadway, Suite 1900  
San Diego, CA 92101  
Telephone: (619) 231-1058  
Facsimile: (619) 231-7423

Samuel H. Rudman, Esq.  
Robert M. Rothman, Esq.  
Mark S. Reich, Esq.  
Edward Y. Kroub, Esq.  
Robins Geller Rudman & Dowd LLP  
58 South Service Road, Suite 200  
Melville, NY 11747  
Telephone: (631) 367-7100  
Facsimile: (631) 367-1173



(BY MAIL) By placing such document(s) in a sealed envelope, with postage thereon fully prepaid for first class mail, for collection and mailing at Manatt, Phelps & Phillips, LLP, Los Angeles, California following ordinary business practice. I am readily familiar with the practice at Manatt, Phelps & Phillips, LLP for collection and processing of correspondence for mailing with the United States Postal Service, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal Service the same day as it is placed for collection.



(BY OVERNIGHT MAIL) By placing such document(s) in a sealed envelope, for collection and overnight mailing at Manatt, Phelps & Phillips, LLP, Los Angeles, California following ordinary business practice. I am readily familiar with the practice at Manatt, Phelps & Phillips, LLP for collection and processing of overnight service mailing, said practice being that in the ordinary course of business, correspondence is deposited with the overnight messenger service, \_\_\_\_\_, for delivery as addressed.



(BY PERSONAL SERVICE) By causing such document(s) to be delivered by hand, as addressed by delivering same to \_\_\_\_\_ with instructions that it be personally served.

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☐ **(BY FACSIMILE)** By transmitting (or causing to be transmitted) such document(s) by use of facsimile machine telephone number (310) 312-4224 at \_\_\_\_\_ [time] to the parties at the facsimile numbers listed on the service list above. The facsimile machine used complies with California Rules of Court, Rule 2003(3). The transmission was reported as complete and no error was reported by the machine. I caused the transmitting machine to print a record of the transmission, a copy of which is attached to this declaration.

☐ **(BY ELECTRONIC MAIL)** By transmitting such document(s) electronically at [time] from my e-mail address, psurjue@manatt.com at Manatt, Phelps & Phillips, LLP, Los Angeles, California, to the person(s) at the electronic mail addresses listed above. The transmission was reported as complete and without error.

☐ **(BY PUC E-MAIL SERVICE)** By transmitting such document(s) electronically from Manatt, Phelps & Phillips, LLP, Los Angeles, California, to the electronic mail addresses listed above. I am readily familiar with the practices of Manatt, Phelps & Phillips, LLP for transmitting documents by electronic mail, said practice being that in the ordinary course of business, such electronic mail is transmitted immediately after such document has been tendered for filing. Said practice also complies with Rule 2.3(b) of the Public Utilities Commission of the State of California and all protocols described therein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on February 14, 2011, at Los Angeles, California.

  
\_\_\_\_\_  
FAULETTE E. SURJUE

# EXHIBIT B

1 MANATT, PHELPS & PHILLIPS, LLP  
2 Brad W Seiling (Bar No. CA 143515)  
3 Chad S. Hummel (Bar No. CA 139055)  
4 Erin C. Witkow (Bar No. CA 216994)  
5 11355 West Olympic Boulevard  
6 Los Angeles, CA 90064-1614  
7 Telephone: (310) 312-4000  
8 Facsimile: (310) 312-4224

9 *Attorneys for Defendant*  
10 YOUR BABY CAN, LLC

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12  
13 FOR THE COUNTY OF LOS ANGELES

14 F. BETH GASNER, on Behalf of Herself  
15 and All Others Similarly Situated,

16 Plaintiff,

17 vs.

18 YOUR BABY CAN, LLC, ROBERT  
19 TITZER, Ph.D., and DOES 1-100,

20 Defendants.

Case No. BC452137

NOTICE TO THE CLERK OF THE LOS  
ANGELES COUNTY SUPERIOR COURT  
AND TO ADVERSE PARTIES OF  
REMOVAL OF ACTION TO FEDERAL  
DISTRICT COURT

21 TO THE CLERK OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
22 FOR THE COUNTY OF LOS ANGELES AND TO ALL ADVERSE PARTIES AND THEIR  
23 ATTORNEYS OF RECORD:

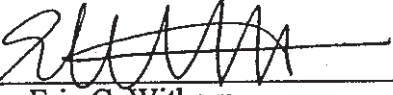
24 PLEASE TAKE NOTICE that on February 16, 2011, Defendant Your Baby Can, LLC  
25 caused to be filed a Notice of Removal of Civil Action to United States District Court for the  
26 Central District of California ("Notice of Removal"). Pursuant to 28 U.S.C. Section 1446(d), the  
27 filing of a copy of the Notice of Removal with the Clerk of this Court effects the removal of this  
28 action. This Court may not proceed further unless and until the action is remanded.

Attached as Exhibit 1 is a true and correct copy of the Notice of Removal of Civil Action  
to the United States District Court and all documents filed concurrently with and in support of the  
Notice of Removal.



1  
2 Dated: February 16, 2011

MANATT, PHELPS & PHILLIPS, LLP  
BRAD W. SEILING  
CHAD S. HUMMEL  
ERIN C. WITKOW

3  
4  
5 By:   
6 Erin C. Witkow  
7 *Attorneys for Defendant*  
8 YOUR BABY CAN, LLC

9 300213161.1

**PROOF OF SERVICE**

***F. Beth Gasner etc. et al. v. Your Baby Can LLC; Robert Titzer, Ph.D.***

I, Terrie Auzenne, declare as follows:

I am employed in Los Angeles County, Los Angeles, California. I am over the age of eighteen years and not a party to this action. My business address is MANATT, PHELPS & PHILLIPS, LLP, 11355 West Olympic Boulevard, Los Angeles, California 90064-1614. On February 16, 2011, I served the within:

**NOTICE OF REMOVAL OF CIVIL ACTION TO UNITED STATES DISTRICT COURT UNDER 28 U.S.C. §§ 1441 AND 1446**

on the interested parties in this action addressed as follows:

Rachel L. Jensen, Esq.  
Robbins Geller Rudman Dowd LLP  
655 West Broadway, Suite 1900  
San Diego, CA 92101  
Telephone: (619) 231-1058  
Facsimile: (619) 231-7423

Samuel H. Rudman, Esq.  
Robert M. Rothman, Esq.  
Mark S. Reich, Esq.  
Edward Y. Kroub, Esq.  
Robins Geller Rudman & Dowd LLP  
58 South Service Road, Suite 200  
Melville, NY 11747  
Telephone: (631) 367-7100  
Facsimile: (631) 367-1173

☒ (BY MAIL) By placing such document(s) in a sealed envelope, with postage thereon fully prepaid for first class mail, for collection and mailing at Manatt, Phelps & Phillips, LLP, Los Angeles, California following ordinary business practice. I am readily familiar with the practice at Manatt, Phelps & Phillips, LLP for collection and processing of correspondence for mailing with the United States Postal Service, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal Service the same day as it is placed for collection.

☐ (BY OVERNIGHT MAIL) By placing such document(s) in a sealed envelope, for collection and overnight mailing at Manatt, Phelps & Phillips, LLP, Los Angeles, California following ordinary business practice. I am readily familiar with the practice at Manatt, Phelps & Phillips, LLP for collection and processing of overnight service mailing, said practice being that in the ordinary course of business, correspondence is deposited with the overnight messenger service, \_\_\_\_\_, for delivery as addressed.

☐ (BY PERSONAL SERVICE) By causing such document(s) to be delivered by hand, as addressed by delivering same to \_\_\_\_\_ with instructions that it be personally served.

☐ (BY FACSIMILE) By transmitting (or causing to be transmitted) such document(s) by use of facsimile machine telephone number (310) 312-4224 at \_\_\_\_\_ [time] to the parties at the facsimile numbers listed on the service list above. The facsimile machine used complies with California Rules of Court, Rule 2003(3). The transmission was reported as complete and no error was reported by the machine. I caused the transmitting machine to print a record of the transmission, a copy of which is attached to this declaration.

☐ (BY ELECTRONIC MAIL) By transmitting such document(s) electronically at [time] from my e-mail address, tauzenne@manatt.com at Manatt, Phelps & Phillips, LLP, Los Angeles, California, to the person(s) at the electronic mail addresses listed above. The transmission was reported as complete and without error.

☐ (BY PUC-E-MAIL SERVICE) By transmitting such document(s) electronically from Manatt, Phelps & Phillips, LLP, Los Angeles, California, to the electronic mail addresses listed above. I am readily familiar with the practices of Manatt, Phelps & Phillips, LLP for transmitting documents by electronic mail, said practice being that in the ordinary course of business, such electronic mail is transmitted immediately after such document has been tendered for filing. Said practice also complies with Rule 2.3(b) of the Public Utilities Commission of the State of California and all protocols described therein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on February 16, 2011, at Los Angeles, California.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

  
Terrie Auzenne

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY**

This case has been assigned to District Judge Christina A. Snyder and the assigned discovery Magistrate Judge is Margaret A. Nagle.

The case number on all documents filed with the Court should read as follows:

**CV11- 1434 CAS (MANx)**

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

**NOTICE TO COUNSEL**

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).*

Subsequent documents must be filed at the following location:

☒ **Western Division**  
312 N. Spring St., Rm. G-8  
Los Angeles, CA 90012

☐ **Southern Division**  
411 West Fourth St., Rm. 1-053  
Santa Ana, CA 92701-4516

☐ **Eastern Division**  
3470 Twelfth St., Rm. 134  
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.



UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself ☐)  
F. BETH GASNER, on Behalf of Herself and All Others  
Similarly Situated,

DEFENDANTS  
YOUR BABY CAN, LLC, ROBERT TITZER, Ph.D., and DOES  
1-100,

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)  
Rachel L. Jensen (SBN 211456)  
ROBBINS GELLER RUDMAN & DOWN LLP  
655 West Broadway, Suite 1900  
San Diego, CA 92101  
Telephone: (619) 231-1058

Attorneys (If Known)  
Brad W. Seililng (SBN 143515); Chad S. Hummel (SBN 139055)  
Erin C. Witkow (SBN 216994)  
MANATT, PHELPS & PHILLIPS, LLP  
11355 West Olympic Blvd.  
Los Angeles, CA 90064  
Telephone: (310) 312-4000

## II. BASIS OF JURISDICTION (Place an X in one box only.)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)  
☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only  
(Place an X in one box for plaintiff and one for defendant.)

- |   |                                       |                            |   |                            |                                       |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
|   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
| Citizen of This State                   | <input type="checkbox"/> 1            | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State     | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State                | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5            |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

## IV. ORIGIN (Place an X in one box only.)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: ☒ Yes ☐ No

☐ MONEY DEMANDED IN COMPLAINT: \$ Amount Not Specified

VI. CAUSE OF ACTION (Cite the U. S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)  
Diversity of Citizenship under Class Action Fairness Act, 28 U.S.C. 1332(d) and 28 U.S.C. § 1453. Putative class action lawsuit asserting claims for unfair competition, false advertising, violation of Consumer Legal Remedies Act, breach of contract, negligent misrepresentation, and unjust enrichment.

## VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS PERSONAL INJURY	TORTS PERSONAL PROPERTY	PRISONER PETITIONS	LABOR
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus	<input type="checkbox"/> 710 Fair Labor Standards Act
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 530 General	<input type="checkbox"/> 720 Labor/Mgmt. Relations
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act
<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 740 Railway Labor Act
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<b>BANKRUPTCY</b>	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 790 Other Labor Litigation
<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 22 Appeal 28 USC 158	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<b>FORFEITURE / PENALTY</b>	<b>PROPERTY RIGHTS</b>
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<b>CIVIL RIGHTS</b>	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 810 Selective Service	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 630 Liquor Laws	<b>SOCIAL SECURITY</b>
<input checked="" type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 61 HIA(1395ff)
<input type="checkbox"/> 891 Agricultural Act	<b>REAL PROPERTY</b>	<b>IMMIGRATION</b>	<input type="checkbox"/> 445 American with Disabilities - Employment	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 892 Economic Stabilization Act	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 446 American with Disabilities - Other	<input type="checkbox"/> 660 Occupational Safety /Health	<input type="checkbox"/> 863 DIWC/DIWW 405(g)
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 463 Habeas Corpus-Alien Detainee	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 894 Energy Allocation Act	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 465 Other Immigration Actions			<input type="checkbox"/> 865 RSI (405(g))
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 240 Torts to Land				<b>FEDERAL TAX SUITS</b>
<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	<input type="checkbox"/> 245 Tort Product Liability				<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 290 All Other Real Property				<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

FOR OFFICE USE ONLY: Case Number: CV11-01434

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
#233  
CIVIL COVER SHEETVIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s): \_\_\_\_\_

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☐ No ☒ Yes

If yes, list case number(s): 2:10-cv-09989-DSF-FFM; 2:11-cv-00027-DSF-FFM

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☒ A. Arise from the same or closely related transactions, happenings, or events; or  
☒ B. Call for determination of the same or substantially related or similar questions of law and fact; or  
☒ C. For other reasons would entail substantial duplication of labor if heard by different judges; or  
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

- (a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.  
☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	New York

- (b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.  
☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	San Diego County

- (c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.  
**Note: In land condemnation cases, use the location of the tract of land involved.**

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	Plaintiffs seek to certify a nationwide class

\* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved.

X. SIGNATURE OF ATTORNEY (OR PRO PER):

Erin C. Witkow

Date February 16, 2011

**Notice to Counsel/Parties:** The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3 -1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))